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Alberta

MUNICIPAL AFFAIRS

Innovative Housing Grants Program

PAPERS PRESENTED TO THE CONFERENCE ON CONDOMINIUM MANAGEMENT PROCEDURES

February 1989

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for the South Alberta Chapter of the
Canadian Condominium Institute

The views and conclusions expressed and the recommendations made in this report are entirely those of the authors and should not be construed as expressing the opinions of Alberta Municipal Affairs.

With funding provided by
Alberta Municipal Affairs

ISBN: 0-88654-237-5

89-05600/

FOREWORD

The project documented in this report received funding under the Innovative Housing Grants Program of Alberta Municipal Affairs. The Innovative Housing Grants Program is intended to encourage and assist housing research and development which will reduce housing costs, improve the quality and performance of dwelling units and subdivisions, or increase the long term viability and competitiveness of Alberta's housing industry.

The Program offers assistance to builders, developers, consulting firms, professionals, industry groups, building products manufacturers, municipal governments, educational institutions, non-profit groups and individuals. At this time, priority areas for investigation include building design, construction technology, energy conservation, site and subdivision design, site servicing technology, residential building product development or improvement and information technology.

As the type of project and level of resources vary from applicant to applicant, the resulting documents are also varied. Comments and suggestions on this report are welcome. Please send comments or requests for further information to:

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ACKNOWLEDGEMENTS

The author of this report wishes to acknowledge the assistance of many volunteers from the Canadian Condominium Institute for the time and effort expended to ensure the Alberta Condominium Conferences would be a success. Thanks are also expressed to the delegates who registered to attend the Conference.

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1.0 INTRODUCTION

INTRODUCTION

The material contained in this report on condominium operating procedures was developed from papers presented at the Alberta Condominium Conference, October 29-30, 1988, in Edmonton and November 5-6, 1988 in Calgary. It is intended to assist condominium owners and Boards of Managers in understanding the attributes and management of condominiums and to serve as a reference of condominium operating procedures.

Section Two examines the financial operating procedures in condominiums, and general information on audits.

Section Three deals with insurance and claim reporting.

Section Four addresses the issue of investing reserve funds.

Section Five introduces mediation and arbitration and discusses the advantages of this service.

Section Six addresses the important subject of communications, how to improve it and how to overcome communication problems in condominiums.

Section Seven discusses recent legal cases relating to condominiums.

Section Eight deals with the maintenance and repair of condominiums and the Board's responsibility.

Section Nine discusses the responsibilities of Board members in a condominium.

Section Ten deals with the tendering process and how to obtain bids.

2.0 FINANCIAL MANAGEMENT OF CONDOMINIUMS

2.0 FINANCIAL MANAGEMENT OF CONDOMINIUMS

by Gary Ruhl and Colin Presizniuk

We have prepared an agenda of information and control procedures which, if implemented, should satisfy the stewardship responsibilities of the Board of Directors to the Owners.

The Board's responsibility is to ensure that basic controls exist and that basic financial information is available to provide security over the condominium's assets as well as to allow the Directors to make timely and informed decisions.

The auditor's primary role is that of adding assurance to the information contained in the financial statements. The owners as users need to know that the financial statements have been properly prepared and present fairly the financial position of the condominium.

As auditors, we are responsible for our final report in that our examination was made in accordance with generally accepted audited standards.

2.1 EXPENDITURE CONTROLS

The system should ensure that proper controls are in place to minimize the mishandling of funds.

The following points outline the basic requirements to restrict the possibility of mishandling of funds.

1. Corporation monies should be recorded on a daily deposit sheet and allocated to the proper revenue accounts.

2. Monies should be deposited quickly and maintained in accounts in the name of the condominium.
3. Cheques received from owners and others should be stamped payable to the condominium corporation.
4. Expenditures should be board authorized before work is requested and all invoices should be approved in writing before payment.
5. All invoices should be marked paid with the cheque number, amount and date paid.
6. All cheques should be signed by two authorized signing officers.
7. The Board should consider bonding individuals responsible for control of cash.

2.2 REVENUE AND RECEIVABLES

1. Revenues should be reconciled monthly, reviewed by the Directors and differences, if any, investigated.
2. An aged listing of accounts receivable should be prepared.
3. Unit owners with old accounts receivable should have caveats registered against them with interest, NSF and legal costs added to their account.

2.3 OTHER CONTROLS

1. Monthly financial statements should be prepared and compared to a board approved budget and major variances investigated.
2. Adequate insurance coverage should be in place.
3. An external audit of the financial statements should be undertaken and should be repeated on a yearly basis.
4. Expert technical advice should be obtained regarding the condominium's reserve fund requirements.
5. Ensure corporate registry filings are current and up to date.

2.4 BOARD OF DIRECTORS INVOLVEMENT

Additional controls over the funds and operation of the condominium should be provided by the duties undertaken by the Board of Directors.

The following information should be prepared monthly and reviewed by the Board:

1. bank reconciliations
2. detailed financial statements which compare expenditures to budgets
3. statements on payables
4. proper minutes of board meetings

3.0 CONDOMINIUM CORPORATION INSURANCE

3.0 CONDOMINIUM CORPORATION INSURANCE

by Hugh Falconar, Falconar Insurance

3.1 TYPES OF INSURANCE CARRIED

"All Risks" Property Insurance

Insures against damage to the units and common property often referred to as "Fire" insurance. Modern policies protect against damage by all risks of physical loss or damage except those risks excluded such as wear and tear, gradual deterioration, rust, etc. Must be arranged on a replacement cost basis.

Comprehensive General Liability Insurance

Protects the corporation and the board against lawsuits alleging bodily injury, property damage and personal injury (libel, slander, defamation, etc.) incidental to the control, management and administration of the corporation's property and the common property. The minimum limits for this insurance are usually prescribed in the By-Laws.

Bond

Protects against loss of money, securities and other property caused by embezzlement by those bonded - employees (if any) and the members of the board.

Boiler and Machinery Insurance

Required by high rise and other condominiums that have boilers, pressure vessels, machinery, transformers, switchgear, air conditioning and any other substantial electrical or mechanical objects.

Directors & Officers Liability Insurance

Protects the Directors and Officers against actual or alleged errors, omissions, misstatements, misleading

statements, neglect or breach of duty while acting within the scope of their duties.

Umbrella Liability Insurance

Provides additional General Liability protection, resting atop the Comprehensive General Liability policy. Besides adding to the limits carried, it is a broader form of policy.

3.2 DIRECTORS & OFFICERS (D & O) LIABILITY INSURANCE: A CHECKLIST ON WHAT TO LOOK FOR

			YES	NO
1.	WHO IS PROTECTED	DIRECTORS & OFFICERS FORMER DIRECTORS & OFFICERS VOLUNTEERS, COMMITTEE MEMBERS EMPLOYEES, STAFF MEMBERS	___	___
2.	WHAT ARE THEY PROTECTED AGAINST? LEGAL LIABILITY EXPOSURE FOR:	ACTUAL OR ALLEGED ERRORS OMISSIONS, MISSTATEMENTS MISLEADING STATEMENTS, NEGLECT OR BREACH OF DUTY WHILE ACTING IN THEIR AUTHORIZED CAPACITIES.	___	___
3.	RETROACTIVE COVERAGE	PROTECTION FOR PAST ACTS ACTS OF PAST BOARDS AND THEIR MEMBERS.	___	___
4.	CORPORATE INDEMNIFICATION	D & O INSURANCE POLICY INSURES INDEMNIFICATION PROVIDED BY ACT AND/OR INDEMNIFICATION BYLAW.	___	___
5.	INSURANCE ERRORS AND OMISSIONS:	D & O POLICY DOES NOT EXCLUDE PROTECTION AGAINST CLAIMS ALLEGING THE BOARD HAVING ARRANGED IMPROPER OR INADEQUATE INSURANCE.	___	___
6.	PURCHASE SALE OR DISPOSITION OF SECURITIES	D & O POLICY DOES NOT EXCLUDE PROTECTION AGAINST CLAIMS ALLEGING THE BOARD NOT HANDLING INVESTMENTS PROPERLY.	___	___

7.	WRONGFUL DISMISSAL:	D & O INSURANCE PROTECTS AGAINST WRONGFUL DISMISSAL LAWSUITS.	___	___
8.	BREACH OF CONTRACT:	D & O POLICY DOES NOT EXCLUDE PROTECTION AGAINST CLAIMS ALLEGING LOSS BY BREACH OF CONTRACT.	___	___
9.	CIVIL RIGHTS,	D & O POLICY PROTECTS AGAINST THESE.	___	___
10.	EXTENDED DISCOVERY PERIOD	(a)EXTENSION OF TIME TO FILE CLAIM IF THE D & O INSURER CANCELS OR REFUSES TO RENEW	___	___
		(b)EXTENSION OF TIME AVAILABLE TO THE INSURED IF THE INSURED ELECTS TO END THE POLICY.	___	___

3.3 NON-OCCUPANT UNIT OWNERS INSURANCE

The situation for unit owners who actually live in their units is quite clear - they simply purchase a properly-composed Condominium Unit Owner's Package Insurance policy. The situation for the unit owners not actually occupying their units is often anything but clear from the insurance standpoint. Following is a brief rundown of the exposures and insurance ramifications.

	EXPOSURE	INSURANCE
1.	DAMAGE TO THE UNIT AS IT ORIGINALLY EXISTED.	INSURED BY THE CONDOMINIUM CORPORATION'S MASTER POLICY ON THE UNITS AND COMMON PROPERTY AGAINST THOSE PERILS REQUIRED TO BE INSURED BY THE ACT AND ACCORDING TO THE BYLAWS.
2.	DAMAGE TO CONTENTS OF UNIT.	(a) UNIT OWNER'S PROPERTY SHOULD BE INSURED BY THE UNIT OWNER. (b) TENANT'S PROPERTY SHOULD BE INSURED BY THE TENANT.
3.	DAMAGE TO IMPROVEMENTS TO UNIT.	SHOULD BE INSURED BY UNIT OWNER.
4.	LEGAL LIABILITY ARISING OUT OF OWNERSHIP OF THE UNIT.	SHOULD BE INSURED BY UNIT OWNER.
5.	LEGAL LIABILITY ARISING OUT OF OCCUPANCY OF THE UNIT.	SHOULD BE INSURED BY THE TENANT.
6.	LEGAL LIABILITY ARISING OUT OF COMMON PROPERTY HAZARDS.	INSURED BY THE CONDOMINIUM CORPORATION'S GENERAL LIABILITY POLICY.
7.	RESPONSIBILITY FOR PHYSICAL DAMAGE ASSESSMENTS.	SHOULD BE INSURED BY UNIT OWNER.

8.	RESPONSIBILITY FOR LIABILITY ASSESSMENTS.	SHOULD BE INSURED BY UNIT OWNER.
9.	ADDITIONAL LIVING EXPENSE AS A RESULT OF, SAY, A FIRE.	SHOULD BE INSURED BY THE TENANT.
10.	LOSS OF RENTAL REVENUE AS A RESULT OF SAY, A FIRE.	SHOULD BE INSURED BY UNIT OWNER.

3.4 IN CASE OF LOSS OR DAMAGE

1. Obtain police file number if police involved.

2. Protect property from further loss or damage
   A. board up openings in building
   B. shut off water supply if necessary
   C. shut off power and gas if necessary
   D. arrange temporary heating if necessary

3. Notify insurance agent.
   NAME:
   PHONE - Office
   Residence

4. Locate your copy of insurance policy.
5. Locate bylaws.
6. Locate appraisal on property.
7. Appoint one board member to deal with insurance adjuster.
8. If owner or tenant has to vacate premises; obtain address number where they can be reached.
9. Obtain permission from owner or tenant to enter premises.
10. Get a key for the premises if occupant vacates.

3.5 CONDOMINIUM CLAIMS

Claims arising under a Condominium Policy are essentially the same as any other property claim. The manner of payment as specified under the Condominium Property Act is probably the most obvious difference. Also, the fact that there are more people involved in any one claim requires additional communication and cooperation among those people.

Claims Reporting

Ideally, the condominium corporation will have a claims reporting procedure in place before a loss occurs. The procedure need not be complicated. The most important factor is that the claim reach the insurance company or adjuster as soon as possible.

The claims reporting procedure is effectively dependent on the type of property management and occupancy of a unit. Suppose that a unit is tenant-occupied and the project is professionally managed. A loss occurs. The tenant may call the unit owner. The unit owner will in turn contact the management company. The management company will report the problem to the insurance company or insurance broker who in turn will probably assign an adjuster to handle the claim. At this point 6 parties or levels are already involved and no handling of the claim has yet commenced.

As it is important that the claim be reported, some of the above steps could probably be eliminated to ensure prompt handling of your claim. Dependent upon your occupancy, management, relationship with your insurance broker/company etc., you may find it easier to simply have the person who is involved with the claim contact the insurance broker or adjuster directly. At that point the adjuster can

coordinate immediate action with the party or parties involved and make the other parties aware of the problem.

If the party who suffers the loss (presumably the occupier) is unable to contact an insurance broker or representative or management representative, that individual should take steps to mitigate the loss. Maintain a common sense approach and consider what you would do if you had no insurance. Take reasonable and necessary steps to make sure that no unnecessary additional damage occurs.

Often the occupier will experience a situation wherein they are not certain if the insurance policy will respond. At that point they should contact the Board of Managers or management company who in turn will probably involve the insurance representatives. It is better to report the problem or potential problem to the insurance representatives as soon as possible. You can be advised if the policy will be able to respond. At that point they should contact the Board of Managers or Management Company who in turn will probably involve the insurance representatives. It is better to report the problem or potential problem to the insurance representatives as soon as possible. You can be advised if the policy will be able to respond to a claim. Even in a case where the insurance policy may not cover the loss, the insurance representatives may be able to offer some practical assistance or advice as to how you should proceed.

All policies require immediate reporting of potential claims. Failure to report claims immediately could possibly lead to problems later in the handling of a loss.

"Players" - Participation in a Claim

There are a number of individuals or groups who might become involved in a condominium insurance claim. Each has a separate and distinct role and considerable communication and cooperation is required.

1. Board of Managers

Most insurance policies grant the Board of Managers the exclusive right to adjust a claim. Under the Condominium Property Act of Alberta, the Board is responsible for making sure that the repairs are carried out. As the Act also requires that payment be made to the condominium corporation, the Board is also responsible for payment of claims. The Board therefore should have some say or input.

Most often, one particular Board of Manager's representative is assigned the task of securing insurance coverage and coordinating insurance claims. It is not necessary that the individual completely familiarize themselves with the insurance coverage as they can rely on the expertise or the insurance broker or adjuster to assist in that regard.

Projects that retain professional management firms often leave the handling and coordination of all insurance matters to the professional manager.

2. Professional Manager

Most professional managers are knowledgeable in securing your insurance requirements and in dealing with claims. In most instances claims will be reported to the property supervisor for your project. That person will in turn contact the insurance broker or adjuster.

Dependent on the management contract, the management company will probably handle all aspects of the claim on behalf of

the Board of Managers reporting the status of pending claims and final result of claims to the Board of Managers.

3. The Unit Owner

As indicated above the Board of Managers has the exclusive right to adjust claims under most policies. The unit owner however is the person or family who is directly involved in most claims. It is their home which has been damaged and their lifestyle which has been interrupted. From a practical point of view therefore, the insurance adjuster will work closely with the unit owner in confirming details of how a loss occurred, the extent and nature of damage, and the coordination of having repairs performed.

The unit owner is an unnamed insured under the insurance policy and is obliged to assist and cooperate with the insurance company (or adjuster).

4. The Tenant

If a unit is tenant occupied chances are the tenant will only know the unit owner as a person with whom he should deal. Tenants do not enjoy the same status as unit owners as they are not insured under the Condominium Policy.

It is important to remember that if a tenant negligently causes damage to the condominium property and that damage is covered by the Condominium Insurance Policy, the condominium insurers will have a right of subrogation against the tenant whose negligence gave rise to the claim. This is not the case with a unit owner who enjoys protection of the policy as an unnamed insured.

5. The Insurance Broker

The Board of Managers or professional manager will normally secure the insurance coverage through an insurance broker. The insurance broker is an independent business man who

represents insurance companies. As condominium insurance is a highly specialized field, it is important that the insurance coverage be secured from someone knowledgeable in condominium insurance matters.

Under normal circumstances the broker will have very minimal involvement with claims. After the claim is reported to the broker he will refer it to an adjuster for further handling on behalf of the insurance company.

6. The Insurance Company

Your insurance policy is a contract between the condominium corporation and the insurance company. Under normal circumstances you will not have direct contact with the insurance company who will be represented by an adjuster.

The insurance company is bound by Federal and Provincial Statutes. The Insurance Act of Alberta outlines most of the insurers obligations.

The Condominium Property Act in this Province specifies that claims be paid by the insurance company to the insurance trustee or to the condominium corporation. The insurance company is not at liberty to make claims payments directly to unit owners, contractors or mortgage companies. This is a very significant difference from most other insurance policies which provide payment either to the individual or to the mortgagee. Surprisingly, many mortgage companies who offer mortgage funds for condominium units are not aware that this is the case in the Province of Alberta. Unfortunately many insurance brokers, insurance companies and insurance adjusters are also ignorant of this fact.

7. The Adjuster

In some cases your insurance company will have an in house or staff adjuster handling your claim. Most condominium

claims in this Province are however handled by an independent insurance adjuster.

An adjuster is an independent business person who handles claims on behalf of various insurance companies. The adjuster is appointed by the insurance company or by the broker who has been granted authority to appoint adjusters on behalf of that insurance company. While the adjuster is being paid by the insurance company, it is his or her responsibility to gather information regarding the loss and submit it to the insurance company in an unbiased fashion. Essentially the adjuster is the coordinator or go-between between a policyholder and that policyholder's insurance company.

One common misconception is that insurance companies and/or their adjusters authorize repairs on insurance claims. This is simply not the case. It is the adjuster's responsibility to assist you in determining the cause or nature of the damage, the extent of the damage, the cost of repairs and in some cases even to involve a contractor. You must remember, however, that the adjuster does not own the property involved and will not be able to authorize repairs on your behalf.

8. Contractors

Most professional management companies and many Boards of Managers representatives deal with contractors on a regular basis. Most adjusters would prefer you deal with a contractor of your choice. After identifying the contractor the adjuster will negotiate the scope of repair and cost of repair with the contractor on your behalf. The unit owner or Board member should be involved to ensure that the scope of damage adequately reflects the work which will be required.

Most contractors dealing with the condominium corporation require a signed work order or a purchase order from a management company or Board of Managers. The contractor will invoice the condominium corporation and be paid for his work by the condominium corporation.

9. Other Players

On many losses the only individuals involved will be the unit owner, Board of Managers and/or management company and the adjuster. The company will be involved but not necessarily directly with the condominium corporation.

On more complex claims it may be necessary to have engineers, health inspectors, building inspectors, etc., involved. Experts in various fields may be required to provide consultation as to how or why a loss occurred and also to assist in repair methods and supervision of repairs. The cost of involving such consultants is included in your insurance coverage subject to the limitations of the policy and is not normally something the condominium corporation needs to be concerned with.

The primary goal of all people involved in a condominium claim is to determine the cause of the problem quickly, mitigate further damage, determine if coverage will apply and have repairs carried out and have the claim settled as quickly as possible. The sheer number of participants in a condominium claim often causes the claim to take a little longer to handle than a normal commercial or private building claim. The time it takes to have the actual damage repaired however should not be affected.

The key ingredient is that all of the parties communicate and cooperate towards their common goal.

3.6 SPECIAL INSURANCE PROBLEMS AND ISSUES

Deductibles

Deductibles should not be considered a problem in condominium claims. They are however often a concern, particularly to the unit owner who is assigned with payment of a deductible.

Most condominium corporations that have been established for a number of years and have experienced any number of claims have probably already laid out some guidelines or precedent for how and who will pay insurance policy deductibles. This will probably become more important in the future. Until recently, deductibles have been in the $250.00 range. Many are now increasing to $1,000.00 and it is very conceivable and indeed probable that we will see deductibles in the $1,000.00 to $2,500.00 range in the not too distant future. On some projects which have experienced a bad loss record on certain types of claims the deductible for that type of claim may even be considerably higher.

There are probably as many variations of deductible payments as there are condominium corporations. The most common approach to deductible payments at the present time seems to be that the unit owner will pay the deductible if the unit owner's negligence gave rise to the claim. If the cause of the loss is extraneous then the corporation as a whole will absorb the deductible.

As deductibles increase it is more important than ever that consideration be given to them prior to losses occurring.

Suppose a small kitchen grease fire occurs and is restricted or confined to one condominium unit. Obviously the fire occurred as a result of the negligence of the unit owner. The deductible under the condominium policy may be

$2,500.00. The corporation's policy has been to have the unit owners pay deductibles where the unit owner's negligence gave rise to the claim.

The condominium corporation is obliged to secure insurance coverage under the Condominium Property Act. The Act does not mention deductibles or who is responsible for their payment nor do most By-laws. The Act also indicates that the Board is responsible to make sure that repairs are carried out and that the insurance companies settlement proceeds are used for those repairs. The Board has been responsible for the authorization of the work.

After the claim is complete the contractor invoices the Board of Managers and requests payment. The Board usually passes the claim to the unit owner on the basis of common practice in which the unit owner must pay the deductible. The unit owner may refuse to pay the deductible and the Board may then have to commence an action against the unit owner to recover the deductible.

There may not be any legal precedents set on this matter in the Province of Alberta to date, and the Board may fail in its efforts to have the unit owner pay the deductible.

A number of simple solutions to deductible payments are summarized below.

Most projects will suffer a certain number of losses each year. If your project has been established for several years you maybe able to determine a reasonable average number of claims per year to be anticipated. Depending on the amount of your deductible, you may consider budgeting insurance claims deductibles in your annual operating budget. A number of condominium corporations are already doing this.

A second method of deductible payment is also available but does not seem to be widely known at the present time. Condominium unit owner policies are available which will provide a deductible assessment against the unit owner. If a unit owner's actions give rise to a claim and the Board of Managers or corporation assesses the deductible against the unit owner, the owner's policy may pay the difference between his own basic deductible (usually $100.00) and the deductible of the condominium corporation policy.

Although deductible amounts at present are often $250.00 or $1,000.00 and are a relatively minor amount in the overall scheme of your annual operating budget, they are very often cause of long and heated discussions. Having a procedure in place to deal with deductibles before a loss occurs will probably save everyone a lot of time and aggravation.

Damage Claims in Abandoned Units

The economic downturn has caused or led to the foreclosure of many condominium units in the Calgary area. In many cases unit owners have simply abandoned the units without notifying management companies, Board of Managers or mortgage companies.

This has resulted in many instances to the natural gas supply being cut off. In cold weather pipes freeze, rupture and cause considerable water damage as a result of failure to maintain heat. In very few instances will insurance companies give consideration to these claims.

Insurance companies have not had as many of these claims so far this winter as in the last three winters. Mortgage companies are acting much more promptly to protect their interest and it appears that most management companies and

Boards of Managers are responding more quickly to ensure that heat is being maintained.

Influence of Weather

Most businesses attempt to estimate the amount of work they will be required to perform each year. Some are more fortunate than others in that they can anticipate their work being seasonal and hire short term employees to accommodate the seasonal highs and lows. Unfortunately, the insurance industry normally does not have this degree of flexibility. We cannot accurately project the extremes of weather which often give rise to large number of claims. Nor can we control a regular flow of incoming claims. The result is that from time to time extremes of weather such as flood, windstorm, freezing, hail, etc., cause an unusually high volume of claims all at one time. These catastrophic situations seem to be occurring on a more frequent basis in the last four years. However, they are not predictable which, in turn, results in temporary delays in the handling of some of these types of losses.

Understanding/Communication

In most cases condominium claims are handled quickly and without difficulty by all the parties involved. It is important that each of the parties understand their respective position or role and that they cooperate and communicate with one another throughout the handling of the claim. This is particularly true on the part of the adjuster. If you are ever in doubt about the status or your position do not hesitate to ask the insurance adjuster. The adjuster may assume that you understand something when in fact you do not understand it at all. Do not feel embarrassed to ask questions or to be involved with input of the claim.

4.0 RESERVE FUNDS

4.0 RESERVE FUNDS

4.1 RESERVE FUND INVESTMENTS

by Park Thompson, C.A.

Each investor has his own set of objectives and priorities when it comes to establishing his portfolio of investments. A condominium corporation is no different in this respect and has the following objectives listed in a descending order of importance:

1. safety or security
2. liquidity
3. return on investment

The order of importance of these criteria are derived from the very nature and importance of the reserve fund. Although my thinking can't help but be conservative, when one reviews the "raison d'etre" of reserve funds it is an understatement to say that all of a fund's investments must be secure. The reserve fund is probably the single most important factor in the long-term health of the condominium corporation. A healthy fund protects the long-term future of the corporation as well as its present owners. It exists solely to meet the costs of major repairs and replacement of common elements and assets. The reserve fund balance is calculated based on expected repair and replacement costs. The necessity of a healthy reserve fund cannot be overstated.

Some people have advocated investing reserve funds in what I would call speculative or risky ventures such as the stock market. As seen as recently as last October, the stock market bears risk since there is no guarantee as to rate of return or future value. The protection and security of the

fund is critical, especially since most reserve funds are underfunded to begin with. A loss of funds through speculation or poor investing could have disastrous effects to the corporation in the same way that an individual could be hurt by "losing his shirt" on his personal investments. The old adage, which says something like, "if you can't afford to lose, you shouldn't play the game", fits this situation perfectly because I don't think that any condominiums can afford to lose. Take a moment and think of two identical condominiums for sale, one with a healthy reserve fund and one that is underfunded. It is easy to see which unit is more valuable and will most certainly sell first.

In respect of liquidity, which is the availability of funds in a short period of time, 100% of the reserve funds do not have to be totally liquid. Reserve fund balances can be made to grow faster yet safely if a portion of them are placed in longer term investments, which usually bear higher rates of return.

Since each condominium is different in terms of its reserve fund and its future use, it is difficult to say what percentage of the balance could be placed in longer term investments, such as bonds or guaranteed investment certificates. I think it is safe to say though that the larger the fund, the larger the potential percentage for investment on a longer term basis.

To enable a corporation to decide what portion of its reserve fund could be invested for a longer term, it must determine what common elements it has which will require major repairs and/or replacement and when. This should be done by having a reserve fund study prepared (preferably on a engineered basis) which will also include a long-term budget to detail when amounts will have to be expended.

Allowing for contingencies, the corporation would then be able to decide how much of the fund could be invested over the longer term.

The third consideration in the investment of reserve funds is rate of return and I stress again that security and liquidity are of greater importance. In the early days of condominiums, reserve funds were generally put into bank saving accounts. As trust companies grew and began to offer higher rates, term deposits became popular. At present Treasury Bills (T-Bills) have taken over as the number one investment vehicle. It is easy to see why T-Bills are hard to beat. Maximum security (fully guaranteed by the federal government), liquidity (can be cashed prior to maturity with only a small penalty), high yield (greater rates than basic short term deposits) plus ease of administration. Basically, I think a corporation should be happy to earn a rate of return that maintains its capital, the goal should not be "award winning" growth.

Most people agree that T-Bills are an excellent form of short term investment. As an option, for the long term, Government of Canada bonds and various bond funds seem to be a good alternative considering security and rate of return.

The question that immediately comes to mind when considering alternative investments is their legality under condominium legislation. Some lawyers are of the view that these are the only investments that a condominium corporation can make while others interpret this section to mean only that this is how the property manager must treat funds (since he is the person receiving the funds) prior to the funds being invested under the direction of the Board of Managers.

Many condominiums also have By-Laws which restrict their investments as to type and terms. Any Board of Managers

contemplating any investments other than term deposits and T-Bills should consult their legal counsel to ensure compliance with trust provisions.

4.2 RESOURCEFUL RESERVES

by William J. Rhind

Because of the relative newness of condominiums, and because their reserve funds have been relatively modest in size, not much profound thought has been given to an investment strategy for them. And yet many professional property managers and boards of managers strive to find, once and for all, an investment strategy that will last a lifetime. Boards present an interesting dilemma in that each year, typically, there is a 50 percent turn over in membership and each board member feels a compulsion to re-invent the investment wheel. Meanwhile, the poor property manager spends an excessive amount of time finding competitive term deposit rates, ensuring that no more than $60,000.00 stays with any one financial institution and keeping track of dozens of small term deposits.

In the absence of a cogent strategy, chartered accountants, lawyers and engineers have felt it necessary to provide investment wisdom. Their solutions, given their basic discomfort with the field of investment and their desire to avoid liability, invariably stress safety and liquidity at the expense of a satisfactory rate of return. Brokers and fund managers, of course, are starting to offer more exotic alternatives but their motives are suspect because they will derive an income if the board takes their advice.

And so, at this point in its evolution, the management of reserve funds for all condominium corporations generally drifts along in a rather aimless fashion.

4.2.1 The Pension Fund Analogy

In order to precondition boards to the need to provide for long-term expenditures, an analogy has been drawn between reserve funds and pension plans.

The analogy seems fair and deserves to be extended. First consider the equation, E = C + I, in which E = the expenditures which a Board or pension plan will have to make, C = the contributions which the unit owners or shareholders will have to provide, and I = the income which the fund, be it reserve or pension, will generate. Pension plans have existed for many more decades than have reserve funds. As a result, the corporate sponsors of pension plans have learned some extremely valuable lessons which can be shared with boards and property managers so that they do not have to re-invent the wheel.

Specifically, the first lesson pension plan sponsors learned was that they should maximize the income from the fund. Otherwise contributions would have to be conspicuously higher and they would come directly from the pockets of the shareholders. This is about as unpopular with shareholders as it is with unit owners.

Second, corporate sponsors quickly realized their own inadequacy when it came to predicting how much money had to be set aside to meet future obligations and in what vehicles it should be invested. They cast their eyes around for consultation and their eyes fell on the actuarial profession.

Canadian pension funds amount to billions of dollars! What have four decades of collaboration between pension plans and actuaries taught us that can be applied to reserve funds?

4.2.2 A Plan For All Seasons

In today's climate, wisdom has to be packaged and labeled or it seems to attract little attention. Rhind's Rules, ten tips towards reserve fund health, seem helpful.

1. Know your mandate:
The provincial condominium acts, with varying degrees of clarity, address your investment powers. Alberta's as an example, is highly precise in confining the board to the limitations of the Trustee Act. You should review your own corporation's By-Laws to ensure that you do not inadvertently contravene them. In general, common sense suggests that you should not enter any unfamiliar arena without learning the rules.

2. Predict your liabilities:
Unless you know with some precision how much you will be spending, in what year, your efforts at investment management will be of very limited value. If you are unwilling to pay a consultant to do this job for you, you have no choice but to do it yourself to the very best of your ability.

3. Set your annual contribution level:
A limited survey suggests that unit owners preferring yearly predictable contribution to a reserve fund, out number those preferring periodic assessments three to one. Once you know your predicted expenses, calculating earnings and contributions is a relatively simple matter of mathematics. For a modest sum, an actuary chosen from the Yellow Pages will probably be happy to check your math (and this is most important to avoid liability).

4. Set up an investment committee:

If you are anxious to bring on severe chest pains, encourage the entire board to decide on the investments. Your best bet is to create a subcommittee of three unit owners with the strongest possible financial background. Only one (typically the treasurer) need be a board member. The others should be encouraged to serve for many years. Their mission is to make recommendations to the board as to investment policy and practice. The continuity and skill they offer will be welcomed by the board, the property manager, the owners and your financial institution.

5. Set some policies:

Picking specific investments is the easiest and last thing for your investment committee to do. Prior to that the committee, based on wide research, should make recommendations to the board for policies governing key issues. What percentage, if any, is your corporation prepared to commit to the equity market? Will income on the reserve fund be left to accumulate within the reserve fund? Do you agree that, for repairs to any one item, no more may be taken from the fund than has been contributed? Do you agree that the fund should not pay for enhancements for which no contributions have been made? Are you comfortable with a policy allowing the fund to be used, if necessary, as collateral for a loan?

6. Set your strategy:

As a broad brush statement, you have two strategies available to you. With less than $500,000 you should probably act as your own fund manager (the "retail" strategy). With more than $500,000 it generally pays to employ a professional fund manager (the "customer" strategy). The difference is somewhat like buying a suit off the rack versus having one custom-made. Both give great value. However, if you can afford the tailored suit, you will pay more but get better value. Under the "retail"

strategy your investment choices are limited to what's available "off the shelf" of your financial institution (demand, time and term accounts, and some funds). The professional fund manager has a wide array of products to choose from, but there is a fee to be paid.

7. Select your financial institutions:
Not all carriers and products are created equal. Which outfit is more knowledgeable about condominium corporations and their unique needs? Which has the greatest commitment to service? Which pays consistently good rates? Which charges low fees? Which has targeted the market best? Which enjoys the best reputation?

8. Decide on the asset mix:
The primary decision is how much you wish to commit to fixed income securities (with absolutely no expectation of capital gain or capital loss), and how much (if any) to equities (with a modicum of risk). This debate should largely have been resolved under step 5 - setting policies. With that portion of the funds committed to fixed income, the final questions to be answered are: What maturity dates do you need to coincide with your predicted expenses? What are the best rates and conditions you can find consistent with a high credit rating? I can hear the cry that by buying, for instance, five year GICs you gain a significantly higher rate but you forfeit liquidity. I can assure you it is possible to have high safety, high liquidity and a high rate of return. Canada Deposit Insurance Corporation (CDIC) coverage has become enormously important with the demise of, for instance, Northlands Bank, Principal Trust and the investment dealer, Osler Inc. Bear in mind that bonds, treasury bills, mutual fund units and corporate shares are not CDIC insured. Bear in mind also that virtually all the billions of dollars invested by pension plans are uninsured which is a tacit vote of confidence by some very

sophisticated investors. If CDIC coverage rates highly in your scale of values, make sure that not more than $60,000 resides with any one institution.

9. Give some thought to the administration:
Making decisions about which securities to buy sell and hold is glamorous. However, someone then has to do the unglamorous "grunt work" - comparing rates, executing the trades, record keeping, safekeeping the securities, producing statements and providing tax slips. It is hardly fair to expect your property manager to take on this burden. If you are unwilling to do the work yourself, there are institutions which do custodial work for a modest fee.

10. Make your trades:
By this point you will have done a conscientious job of planning your investment strategy and it will have led you to the decisions which you are now ready to execute. Like many another board, you may well conclude that 70 percent of your concern is with safety, 20 percent with liquidity and 10 percent with rate of return. If you can not figure out how to get high rates with high liquidity and high safety, track the author to his lair in Calgary and he will tell you how it is done.

I would like to boast that these 10 steps were the product of original thinking. The reality is, however, that they have evolved over the past 40 years through the experience of corporations, their pension committees, actuaries, fund managers, and custodians. And this experience is freely available to the condominium community.

5.0 MEDIATION AND ARBITRATION

5.0 MEDIATION AND ARBITRATION

5.1 MEDIATION AND ARBITRATION IN CONDOMINIUM DISPUTES

by James A. Cox, Q.C. and Joanne H. Goss

5.1.1 Introduction

Typically disputes within a neighborhood or business are resolved with an adversarial approach involving either enforcement officers or the court system to finally deal with the issue if the parties are unable to do so between themselves. Mediation and arbitration are simply alternative methods by which disagreements and disputes can be resolved. The practices have evolved out of people's need for a fair and cost effective means of resolving disputes quickly and constructively. Their flexibility and custom-tailored approach enables them to fit within any environment.

5.1.2 Mediation

Mediation is a process of dispute resolution where an independent, neutral, third party negotiator assists parties to a dispute in resolving the problem by facilitating negotiations between them. The independent negotiator helps the parties narrow down the relevant facts, clarify the issues in their dispute, identify any underlying concerns and develop an understanding as to the interests of the other party. Each party must have the authority to make a binding decision as to the resolution of the dispute with the object of the mediation being the generation of options that may be acceptable solutions for either side once the facts, issues, interests and underlying concerns have been identified. The goal is to search for a solution to the dispute that meets the interests and concerns of each of the parties and is acceptable to both. The parties are

encouraged not to make concessions but only to remain open to being persuaded if he or she thought it was fair. At no time does the negotiator or mediator impose a settlement on the parties. The resolution that is reached as a result of mediation is entirely the product of and within the control of the disputing parties, the mediator only makes it happen by controlling the process. Should discussions break down, the parties are free to walk away at any time. The entire process usually takes anywhere from 2 to 8 hours, depending upon the complexity of the issues.

Mediation works because the process causes each side to the dispute to hear and understand the basis for the other's position and to each reassess their own position with this information in mind. Usually doubts as to the strength or fairness of some aspects of the position will arise creating an ability for the parties to move closer to a settlement which each feels is fair. Because the content of the mediation is entirely confidential until a final settlement is reached there is no danger to either side in considering various proposals.

The benefits of mediation are as follows:

Speed:
Resolution of the dispute is possible within hours, days or weeks depending upon the complexity of the issues. This can be crucial where neighbour or business relationships are being strained as a result of the conflict.

Cost:
Substantial time and money can be saved by avoiding lengthy litigation.

Privacy:
The process is entirely confidential thereby avoiding exposure of the conflict itself and any confidential information.

Informal Atmosphere:
The setting in which mediation takes place is relaxed and informal with a focus on non-confrontational problem solving.

Satisfaction:
Quick resolution of a dispute, focusing on common interests and understanding differences with a view to workable solutions, results in more acceptable and more permanent agreements.

The drawbacks to mediation are as follows:

Voluntary:
Both parties to the dispute must agree to take part in the process and actually contribute to make the process work. If one party refuses to become involved in the process, mediation cannot work.

Enforcement
Mediated settlements are not enforceable in and of themselves as are arbitral awards and Court Orders. Upon reaching a resolution the parties must also devise an enforcement mechanism such as an agreement or a Consent Court Order.

5.1.3 Arbitration

Arbitration is a process of dispute resolution whereby disputes between parties are submitted to one or more mutually agreed upon arbitrators who make a final and

binding decision on the dispute. The process of adjudication is controlled entirely by the parties who select the adjudicator(s) and the arbitral process that best suits their specific needs.

Arbitration is more similar to a judicial hearing than mediation in that an arbitrator makes a final and binding decision as to resolution of the dispute after hearing the evidence and arguments of both sides to the dispute. The parties control the process by governing the procedure to be followed in the arbitration. It is also possible for parties in a dispute to engage an independent third party to initially mediate the dispute and upon unsatisfactory resolution through mediation, to arbitrate the dispute to a final binding decision. However, it must be clearly agreed to and understood between the parties before commencing such a process that the agreement will be final and binding. Indeed, if the arbitration takes place in accordance with the provisions of the Arbitration Act, R.S.A. 1980, c. A-43, the arbitral award can be enforced in the same manner a a judgment or order of the Court. The only basis upon which an arbitration award can be set aside by the courts is if the arbitrator misconducted himself or an arbitration or award has been improperly procured. Such a case may arise where the arbitrator can be shown to have acted with bias, exceeded his/her authority, breached the rules of natural justice or made an error of law on the face of the record. The benefits of arbitration are as follows:

Control:
The process is designed by the parties entirely to suit their needs. Accordingly, the arbitration can take place at the business premises of one or the other of the parties and at any hour of the day that is suitable to each of the parties.

Speed:
The process can be as expeditious as the parties wish to make it. Resolution of the dispute is possible within hours, days, weeks, or months of crucial importance in a neighborhood or business where prolonged disputes can affect relations, tie up funds and drain human resources.

Cost:
Substantial time and money can be saved by avoiding lengthy litigation.

Privacy:
The process is entirely confidential thereby avoiding exposure of the conflict itself and confidential business information and documents.

Binding:
The decision of the arbitrator cannot be appealed.

The drawbacks of arbitration are:

Co-operation:
Where one of the parties fails to co-operate and is intent on delaying the proceedings, the other party has limited remedies at its disposal in comparison to the remedies available through litigation.

5.1.4 Deciding How To Proceed

In determining whether to utilize mediation, arbitration or litigation, a number of factors must be considered:

Nature of the Conflict
If the conflict is a purely legal issue which must be decided by the courts then mediation and arbitration are inappropriate where the ruling itself is of prime

importance. However, if resolution of the dispute is of prime importance to the parties mediation and arbitration should always be considered as alternatives.

The Parties Involved

As indicated earlier, co-operation is required with both mediation and arbitration and accordingly if the parties on the other side of the dispute are difficult and intent on delay, litigation is perhaps the best alternative.

Time

A lengthy legal battle is rarely advantageous unless a party is simply attempting to delay the inevitable. Accordingly, serious consideration of alternative methods by which to resolve the dispute quickly and effectively is essential.

Confidentiality

Documents filed in a court proceeding are public record and available to anyone. Accordingly, if the parties to the dispute wish to resolve the matter privately and quietly, mediation and arbitration are obvious alternatives.

5.1.5 Conclusion

Mediation and arbitration are quickly becoming popular as effective and efficient methods of resolving conflict within North America. In July of 1987 over 200 American corporations and their subsidiaries signed the "alternate dispute resolution pledge", a commitment to pursuing settlement through alternative litigation. Neighbourhood mediation programs are also becoming increasingly more common in urban centres throughout North America for resolving local disputes. Clearly, North American society is becoming control-oriented with respect to their disputes and insisting upon methods of dispute resolution which provide effective and efficient results.

5.2 A JUDGES VIEW OF ARBITRATION AND MEDIATION
ANNUAL LIONEL MCGOWAN LECTURE

by Associate Chief Justice Tevy Miller

Mr. Chairman, Mr. President, distinguished guests of the head table, ladies and gentlemen.

Firstly may I express my deep appreciation to the introducer for the kind introduction. Secondly, let me say how flattered I am to have been asked to deliver this year's Lionel James McGowan Memorial Lecture. To follow in the footsteps of my distinguished predecessors who include national presidents of the Canadian Bar Association, the President of the American Arbitration Association, leading jurists, prominent politicians, educators and business leaders, is both pleasing and somewhat intimidating at the same time for what can I add to the collective wisdom that has not already been placed before you?

After a good deal of pondering and reflection I thought I could best discharge my role by trying to give you one Judge's view from the bench on the subject of arbitration and mediation as it works with or, in some cases, is perceived to work against the established formal court systems of dispute resolution in this country. Before I enter into the main body of my remarks let me set the record straight in two areas. Firstly, those of you in the audience who have much to do with members of the Canadian judiciary will know that we are a fiercely independent group of individuals who value the concept of judicial independence as we know it in this country. As a group, they get very uneasy about anyone, including the Chief Justice of Canada, making statements or presenting views that purport to speak for the Judges of Canada which may, in any way, fetter their individual discretions or their

ability to decide a case within the law as they understand it. In recognition of this undisputed fact, let me say, categorically, that my views on arbitration and mediation and their attendant processes are strictly my own and are not intended to bind any of my judicial colleagues. Having given the standard disclaimer, I would like to say that personally I am a solid believer in the concept of arbitration and mediation, both inside and outside of the standard court-based system of dispute resolution, to settle disputes between parties. I think it is fair to say that in my 24 years of law practice in Alberta I was known as an early settler who strived mightily to keep my clients out of the courtroom and in 12-1/2 years on the bench in this province I have stated, both in my private chambers and publicly from the bench, that I thought many of the disputes which came before me could have been resolved in a more satisfactory way by arbitration or mediation than by the formal court method.

The concept of using various forms of arbitration or mediation to settle disputes is as old as the history of man evolving systems of organized societies. Once it was realized that people could exist better in groups, it became apparent that the group had to delegate to a person or persons within the group the authority to solve disagreements that would inevitably arise between members of the group. Often this authority was given to the eldest or group of elders, or to the chief or king, or the religious leaders and teachers or to those appointed or elected to be Judges. In my tradition, the earliest authority was delegated to the rabbi's which is a Hebrew work meaning "teacher".

There is an apocryphal story of a husband and wife having marital difficulties who came with other members of their family before a Rabbi. He patiently listened to the story

of the wife. At the end of it he thought for a few minutes and said to the group that she was right. The husband objected saying that the Rabbi hadn't yet heard his side of the argument so the Rabbi patiently listened to his version. At the end of this representations the Rabbi thought again for awhile and said that he was right. Whereupon a third member of the family stepped forward and said to the Rabbi that as the two stories were in direct conflict how could both be right. The Rabbi thought again for a while and finally replied to the assembled group. He said "You know you're right also".

I would like to organize my remarks into three separate areas which will inevitably overlap at times. These will be, firstly, the areas where the courts get involved in the arbitration process in a formal way, secondly, how the courts and Judges are now getting involved in the arbitration process in an informal way and, thirdly the present relationship as I see it between Judges, lawyers and the many organized bodies such as your organization involved in the arbitration concept and process.

How does our court system get involved on a formal basis with the arbitration process? Most, if not all Provinces have an Arbitration Act, or a statute accomplishing the same ends with a different title. They all tend to legislate in a similar vein and, as I am most familiar with the Alberta Arbitration Act R.S. 1980, Chapter A-43 I will use it as an example of what can happen.

One of the major areas where the court can get involved arises where the parties have agreed in writing, usually at the outset of the relationship and before any disputes have occurred, to submit any future problems to binding arbitration. The agreement typically provides whether disputes will be arbitrated by a single arbitrator appointed

by agreement between the disputants or by a panel of arbitrators. Usually each side appoints a member to the panel and the members agree upon a chairman. There are frequently time limits spelled out when these appointments are to be made. Section 5(1) of the Alberta Act, unless the agreement specifically says otherwise, permits either side to a dispute to ask the Court of Queen's Bench of Alberta to appoint the arbitrator or a panel member or a chairman if the parties neglect or fail to agree upon an appointment within the times set out.

There has been very little judicial interpretation of this section in Alberta. The only case reported is a 1986 decision of our Court of Appeal which set aside a Court of Queen's Bench order appointing an arbitrator under Section 5 of the Alberta Act on the grounds that there was no agreement between the disputants that any differences would be submitted to arbitration and consequently the court has no power to act.

A second area where the courts get involved is when one of the parties to an arbitration seeks to disqualify an arbitrator or arbitrators or to challenge their decision by asking the court to review the entire matter. This procedure is covered in Alberta by Sec. 11 and 11.1 of our Act.

Section 11 provides that if an arbitrator or umpire has misconducted himself the court may remove him and any award or decision given prior to removal may be set aside. What does the term "misconducted" mean in this context? The Supreme Court of Canada over 50 years ago defined this term in a case called Scotia Construction v. Halifax City when it said:

> 'Misconduct' is in this relation a term of very comprehensive denotation, and includes ambiguity and

uncertainty in the award, as well as manifest error of law on the face of the award.

Section 11 also provides that a court may set aside an arbitration award when it has been improperly procured. Again what does the term "improperly procured" mean in laymen's language? There is no neat, precise definition of this term found in the jurisprudence but one thing is clear. It is not sufficient for a Judge to say that he would have reached a different conclusion on the issue being arbitrated than did the arbitrator or arbitrators in order for the courts to interfere with an arbitration award. The court must be satisfied that a manifest error of law was made at the arbitration level and such an error of law must be found on the face of the award. The classic statement of what this means is to be found in a statement by the English Judge Lord Dunedin found in a 1923 Privy Council Decision, which was expressly adopted by our Supreme Court in 1960. It states:

> An error in the law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated therein, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and you can then say that it is erroneous...here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made.

What this means, in practical terms, is that the courts refuse to re-hear the matter and will not go through the evidence, either by re-hearing witnesses or by examining a transcript of the evidence heard by the arbitration tribunal, trying to second guess what the tribunal had in mind in coming to its decision. In an appeal to the court the Judge or Judges will limit themselves to reading the

award and, occasionally, any document attached to the award itself which forms an integral part of the award in trying to arrive at a decision as to whether the award contains a manifest error in law on its face. In addition, if any error of law is disclosed on the face of the award, such error must have gone to the heart of the decision and materially affected its outcome before a court will interfere. Some minor technical error, not critical to the decision, will not be sufficient to allow the court to interfere. The term used to describe an error of law which will allow the court to interfere is "patently unreasonable".

Often the court will be asked by the party seeking to upset the arbitration award to find that the reasons given in the award or the clauses in the contract being arbitrated are so ambiguous that the court should hear or examine evidence as to what the parties said or did either before or after the dispute arose in order to shed more light on what the parties intended. Again the court is very reluctant to re-open the matter and, I think it is fair to say, that Judges go a long way to avoid a finding of ambiguity in this context in order to by-pass this possibility.

You will also note that in many consensual arbitration agreements a clause containing wording similar to the following will be found. "The decision of the arbitrator or arbitrators will be final and binding upon the parties". How have the courts treated this proscription when it comes to reviewing the tribunal's decision? The recent decisions indicate that even the strongest words along these lines do not prevent a court from looking at the decision but, again, the likelihood of a court interfering is only on the basis of a "patently unreasonable" error of law affecting the decision itself.

The last point I wish to make in this area is the question of whether the parties can come to court if there is a consensual agreement containing an arbitration clause without first going through the arbitration process.

There appears to be considerable authority for the proposition that where a contract contains an arbitration clause, the parties should use that means of dispute resolution first rather than taking the matter to the courts. In Q.C.T.V. v. Edmonton 27 Alta L.R. (2D) 362 (Q.B.), the Court of Appeal upheld the decision of the trial court where the justice stated that since the agreement had been entered into in a spirit of free enterprise, it should be adhered to by the parties, therefore, the matter in dispute should be dealt with in accordance with the arbitration clause in the agreement, rather than being sent to the courts without going through the arbitration process spelled out in the agreement.

However, in Donaldson v. Carriage Holdings Ltd. (1980) 13 Alta. L.R. (2D) 32, 27 A.R. 240, a warranty agreement for a house included a clause for arbitration. The defendant filed a statement of defence. The court in that case held that the defendant, by filing a statement of defence, had waived his right to have the matter settled by arbitration.

Before leaving this area let me say that what I have given you is a set of general principles extracted from court decisions over the years. However, you should be aware that in each individual case there is a good deal of judicial discretion involved and many decisions turn on the peculiar facts of the case. The bottom line, in my view, is that the courts in Canada generally adhere to the view that consensual arbitrations are a good way of resolving disputes and they should, therefore, be encouraged and supported whenever possible. It is only in cases of manifest errors

of law that are patently unreasonable on the face of the award and that go to the heart of the decision that the courts will interfere. Even in those rare cases, the court remedy is often to remit the matter back to the same arbitration tribunal with instructions to re-hear the dispute and to render its decision on the basis of the correct legal principals. Arbitrators should not view our courts or Judges as parties looking over their shoulders ready to pounce if inconsequential errors of law are made or simply because we would have come to a different conclusion on the same facts. This does not mean that the parties to the dispute will not continue to try the courts on for size if they are unhappy with the result of the arbitration, but the judicial system has no control over this, except to try and send out clear messages that the chances of success in overturning an arbitration award are not very good.

The second area I would like to cover is the present relationship between the formal court system in this country and the various approaches to alternate dispute resolution processes which are rapidly emerging through organizations such as the Arbitrators Institute of Canada Inc. Again, I will be primarily focusing upon trends which I have observed in Alberta, as I am most familiar with them, but I suspect these only mirror to a greater or lesser degree what is happening all over Canada. I am also aware that the Honorable Ian Scott, Attorney General for Ontario, delivered the McGowan lecture at your annual meeting last year and I will try not to cover too much of the same ground that he so ably explored in his address.

We all know that there presently exists problems with the public's ability to access the present formal court system of dispute resolution. Without going into great detail, for you are already aware of the nature of the various problems, we all recognize that delay, high cost and the

inappropriateness of the adversarial approach in resolving some forms of disputes are hampering the effectiveness of our present court procedures.

The extent of some of these problems varies from Province to Province but they, nevertheless, exist across the land to some degree. On the question of delay in getting a case to a trial hearing we think we are very fortunate in Alberta. At present, once a civil case has been certified by the lawyers for both sides as being ready to go to trial, we can give the litigants a fixed date for the trial to be heard within four months in Edmonton and Calgary and within the same time range in the smaller circuit points.

Under our present systems in Canada the courts exercise little control over the pace with which a dispute proceeds in the hands of the disputants and/or their lawyers until the parties tell us that they are ready to go to trial. It is my impression that a good deal of the delay in getting a matter disposed of through the court system of dispute resolution occurs during the preliminary stages before the case is ready for trial. This is in sharp contrast to some American jurisdictions where a case is assigned to a particular Judge the day the first pleading is filed at the Registry Office and it is up to the Judge to regularly monitor its progress until it is resolved by settlement or trial.

In this Province the courts also have little control over the costs involved in the trial process except to hold the trial within the Province at the place most convenient to the parties and to guarantee that the trial will continue through to completion once it gets started even if it overruns the time initially allotted to it. Additionally, statutes such as the Prejudgment Interest Act in Alberta and the rules of court on costs give the court an effective club

to use if there is any evidence that one party is delaying the resolution of the dispute unnecessarily or unfairly. Similarly we have only limited control over the shortcomings of the adversarial system which manifests itself most visibly in family law matters, particularly custody and access disputes. I realize that some other jurisdictions in Canada are not in quite as fortunate a position as we in terms of the length of time it takes to get a matter heard.

Having observed and noted the problems, what are we in the formal court system doing to try to alleviate these problems and to make the system better able to serve the public? A number of steps have been taken and are in the process of being developed across the country. One of the major thrusts was referred to by Mr. Scott in his address last year and that is the report on the judicial system in Ontario being prepared by Mr. Justice Thomas Zuber which is expected to be made public later this year. It is hoped by all of us associated with the administration of the court system that this report will come up with some concrete, practical suggestions to accelerate the process of dispute resolution in the courts and to provide ways of bringing down the costs of litigation. My colleague Chief Justice Allan McEachern of the Supreme Court of British Columbia estimated that the cost to the litigants of a simple two day trial in that court was now running between Ten and Fifteen Thousand Dollars. At that price only the wealthy or those on legal aid can afford to litigate within the formal system.

Some of my legal colleagues have suggested that one way to combat the problems is to appoint more Judges and open more courtrooms. I have come to the conclusion that this approach is not the answer in the long term. Firstly, it will only increase the cost to the taxpayer of the system and, secondly, we are having enough difficulty with our

present numbers in keeping some semblance of uniformity and consistency in procedure and precedent which becomes aggravated as numbers proliferate. Once we lose the element of some predictability the whole system starts to unravel and lawyers, together with their clients, would want to litigate everything rather than settle on established precedents. What we are slowly developing within the system are some new approaches, at least they are fairly new within the court system. These centre around the concepts of pre-trial settlement conferences and mini-trials. In the pre-trial settlement conferences format, a Judge, who will not be taking the trial if the matter proceeds that far, meets with all counsel to discuss the strengths and weaknesses of each side of the case. It is important that the lawyers who attend the conference are knowledgeable in the matter and these conferences usually take place 4 to 8 weeks ahead of the scheduled trial date for, hopefully, by that time all of the preliminaries are completed and the opposing counsel have a good grasp of their respective positions. After each counsel outlines his case the pre-trial conference Judge then expresses his view as to the probable outcome of the trial. Although each counsel realizes that this is just one Judge's opinion, formed after a fairly short exposure to the facts, it very often gives them the impetus to go back to their clients and to negotiate a settlement. What we find often occurs is that the lawyers, who have done their homework and have properly assessed their client's positions, would like to settle but have pushed their clients as far as they can without pushing them out of the door. However, the opportunity to come to the client and to tell him or her that an experienced trial Judge, at a pre-trial conference, heard the representations and recommended a settlement in the range which the lawyer feels is fair and reasonable is a powerful and face-saving way for the counsel to persuade a client to settle. The Judges of Ontario and British Columbia pioneered these

techniques in Canada and now virtually every Province has instituted the process. The obvious benefits are the enormous amount of trial time saved as well as a saving of the direct and indirect costs of the trial itself. In addition it has the virtue of eliminating the risks, attendant in any trial, of an unexpected result and saves the costs of an appeal.

Another interesting thing that we have learned is that not every able trial Judge makes a good pre-trial settlement conference Judge. The special skills required to conduct a good settlement are not always the same as those needed to conduct a good trial. Although the settlement proposed by the settlement conference Judge is not binding upon either party, it has been our experience that a significant percentage of cases headed for trial are settled after a well-handled settlement conference.

A logical outgrowth of this pre-trial settlement conference approach has been the recent trend towards what has been described as the mini-trial. This procedure arises typically in two situations. One is where the lawyers think they and their clients are so close to settlement that their differences do not warrant the time and costs of the trial. In a few Provinces, principally British Columbia, the lawyers can approach the Chief Justice and ask him to appoint a Judge charged with meeting with the lawyers and their clients to hear quite extensive oral presentations from the lawyers on the facts and applicable law. The Judge may question the lawyers and at the end of the presentation, in the presence of the clients, will render a decision. Again the decision is not binding but it seems to have a strong influence on the clients which, again, leads to a high percentage of settlements. These hearings are either conducted in the Judge's chambers or informally in a courtroom and usually take a half to a full day or more,

depending on the complexity of the case. Again, they result in enormous savings of time and costs.

The second situation is one I have used many times in Alberta and so I will use my personal experiences to explain the process. When I conduct a pre-trial conference I try to ascertain whether the counsel think the matter is capable of settlement in their minds. If they indicate a positive reaction I then suggest to them that we adjourn and reconvene a full blown settlement conference with their clients present in person. I tell them what the format will be so that there are no surprises. They are advised that at the outset I will explain to their clients that I am only the pre-conference Judge who will not take the trial nor will I disclose to the eventual trial Judge anything said by them or me at the pre-trial conference. I tell them that they can get a sort of a dress rehearsal from me. At the end of the submissions I will tell them what I would decide on the facts as I perceive them and will explain my reasons for coming to my decision. I then tell them that after they have heard what I would do with the dispute I will ask them to go to another room with their lawyer and discuss with him whether they think they could accept my decision as a basis for settling the dispute. I again point out that they are not in any way bound to listen to what I decide and that they are not being pressured by me to settle on the basis of my decision if they cannot accept it. I say that they will still get a full trial hearing before a new Judge who will start afresh. However, I do point out what the costs are that they are risking by going to trial. I usually ask the lawyers to report back to me on progress towards settlement within a reasonable time, say a half an hour. Sometimes I end up doing a little bit of "shuttle diplomacy" going from one room to another to work out the final terms of a settlement. Incidentally, after each side's lawyer presents his version of the facts and the law, I ask each lawyers'

client if he wants to add anything to what his lawyer has said so that the client also feels he has had a chance to express himself or to comment on the other side's position.

My experience with this type of format has been most interesting and informative. I have found that 70 to 90 percent of these types of mini-trials result in settlements but, even more interesting to me, is the reaction of the litigants as reported to me later by their lawyers. I am told that many of them feel they have "had their day in court" by virtue of the fact that they heard and saw a real live Judge and had the chance to express their views to the Judge. It did not matter to them that the procedure was an informal one and the Judge wasn't robed sitting on an elevated dias. This was a bonus I had not expected when I started to experiment with this format. Incidentally, I have also learned that the process is a waste of everyone's time if any of the lawyers involved are of the opinion that the matter is incapable of being settled on a reasonable compromise basis and I never proceed to invite them to bring their clients if I sense that they are reluctant to do so. Again, there is an enormous saving of court time, lawyers and litigants time and, of course, costs.

Why do I take the time in this presentation to tell you about these new trends? If you stop and think of what we are doing in the formal court system it seems to me to be moving closer and closer to the arbitration, mediation and conciliation concept that your organization espouses. On the other hand I seem to be hearing that you are moving in the direction of more and more formalizing of your processes, such as establishing criteria for arbitrator's training and qualifications plus refining and defining your rules and procedures. We are both responding to the perceived and real problems besetting our systems of dispute resolution and this can only be to the benefit of the public

at large. What I think is of importance is that all of us involved in the area of dispute resolution should work together to, firstly, know what each other is doing, secondly, to learn from each of our respective successes and failures and to realize that we are all striving for the same end result, namely, to provide the best, most effective, most accessible and least costly methods of solving people problems.

The last area I would like to comment upon is my view of some of the perceptions, right or wrong, which I think exist amongst some Judges and lawyers pertaining to the concept of arbitrations held outside of the formal court system. Let me say, at the outset, that I believe all of us involved in the formal court system are very proud of what it does accomplish when it gets a chance to work, even with all of its warts. We work very hard, within the present system, to see that not only is justice done but that it also is seen to be done. Sometimes our efforts to carry this out are the cause of delays and added cost, for I think, at times, we tend to bend over backwards to try to be fair. Perhaps we agree to adjournments too readily to accommodate the lawyers or the litigants, thereby extending the time for bringing the matter to a conclusion. Sometimes, we allow the parties to go on fishing expeditions that have little to do with the root issue of the dispute, all in pursuit of the holy grail of fairness and natural justice.

With this background in mind, I have discussed with some of my legal and judicial colleagues the pros and cons of the extra-judicial arbitration, conciliation and mediation approaches. Some of them, quite frankly, see the growth of such ideas as a direct threat to their livelihood or the viability and prestige of the formal court system. Many lawyers have advised their clients against arbitration when it is provided for in a consensual agreement because, even

if they are retained to conduct the hearing, they are apprehensive of appearing before an arbitrator or panel of arbitrators who may not be legally trained plus a process where the rules of evidence may not pertain. They argue that a properly run arbitration can be as lengthy and costly as a court trial and may end up with the added cost of having to appeal the decision to a court of law if the arbitration procedure or reward fails to meet their view of proper legal standards. They will contend that the risks of an unexpected result is greater in an arbitration and what one may hope to gain in getting a faster hearing can be lost, without an ultimate saving in cost, if an appeal results. While I concede there are some of these risks involved in the arbitration procedure it is my personal view that the concerns expressed over these risks are overblown and, let's face it, there is no such thing as a risk-free trial.

However, there is in my view, one area where concern is often expressed that does have more validity. While I feel that our court based adversarial system is not always the best way to resolve some kinds of disputes, particularly matrimonial, child custody and access matters, I am quite convinced that, where the issues revolve around matters of credibility, a trained Judge operating in a formal court setting with witnesses testifying under oath and being subject to cross-examination, is a superior method of solving these problems than an informal, arbitration type hearing. On the other hand, where the issues in a civil matter revolve around highly technical, specialized knowledge requiring the interpretation and opinion of experts then I am equally convinced that the arbitration process, where the arbitrator possesses the requisite expert knowledge and skill, is probably better able to resolve these kinds of disputes.

In summary, if there was a perfect way designed to handle all of the different kinds of disputes that can arise in our forms of society we have yet to discover it. Until that millennia occurs, we must recognize the strengths and weakness of formal court systems and the less formal arbitration processes to solve disputes. Those of us who work within each or both systems should be prepared to use and to recommend either system when the circumstances merit it. It should never boil down to one approach as the answer to all problems and I don't think any of us, who have given the matter careful thought, advocate such a position.

As I've stated earlier each system has much to learn from the other and we can compliment each other. It was in pursuance of this belief that I welcomed the opportunity, as a representative of the formal court system, to express my own views before a national meeting of your group: I hope they will be of some assistance.

6.0 COMMUNICATION AND APATHY IN CONDOMINIUMS

6.0 COMMUNICATION AND APATHY IN CONDOMINIUMS

6.1 THE ART OF COMMUNICATING IN A CONDO; A REFLECTION OF YOUR MANAGEMENT STYLE

by Lynora Brown

6.1.1 Introduction

Reflecting Management Style

Communicating in a condominium...it sounds easy and direct! But anyone who's ever been on the Board of Directors for their complex knows it takes the wisdom of Solomon, the conviction and vision of a master orator like Martin Luther King, the humanity and patience of a Mother Theresa and the sense of humor of Bill Cosby.

You've got the picture - it takes a Saint to do it right! Now, MY halo has slipped just a little. And the last time I checked we weren't blessed with any resident saints in our complex.

So, without the Divine Guidance the job calls for, I'm forced to apply two man-made guidelines to the art of communicating. These are based on the realities of condo lifestyle, but apply to organizations and businesses as well.

The first reality is that the way communication occurs in a condominium complex mirrors the Board's style of management. And, management style depends on the personalities involved, which may change from year to year or even within a given board term.

If you've been blessed with directors who are reasonable, knowledgeable and ethical people, the communication process is more likely to be painless, simple and credible.

If, on the other hand, your project is in the hands of people who find it difficult to separate personal biases from condominium business decisions: who lack judgment and interpersonal skills...the situation is pretty grim and no amount of communication can solve the problem.

The damage that a lack of personal integrity and credibility - ON THE PART OF ANY INDIVIDUAL BOARD MEMBER - has on your condominium management and communication efforts can't be overestimated. It's deep and long-term.

My point here is that communication in a condo - as in any other business or organization - is not measured or conducted in isolation of other factors. Communication is part and parcel of your management process.

Adequate and appropriate communication depends on professional and credible board members.

Such a communication formula is based on these key components:
- You research issues and By-Law infractions thoroughly: this applies to the Board as a whole, an individual Board member, or a unit owner who isn't on the Board.
- You require that complaints be made in writing and ABSOLUTELY DO NOT become involved in hearsay disputes between neighbors.
- In issues that do require Board involvement, you build a paper trail so everyone involved understands the issue that is being dealt with.

6.1.2 Adopt A Plan To Stay On Track

Communication in a condominium takes two basic forms: face-to-face or verbal and written.

The most common vehicles in which this communication occurs is: impromptu chats between an individual board member and unit owner: a board meeting or general meeting: a letter from the board or management firm to an individual unit owner on a specific issue: or a newsletter issued regularly by the board to all unit owners.

In all cases, it has to be a two-way street or an exchange of information with an equal amount of time given to listening as speaking.

Good communication doesn't happen by accident. It's predicated on these board decisions.

1) There's a NEED to communicate regularly.
2) What will be communicated will be the TRUTH.
3) Appropriate vehicles will be identified and a schedule for communication will be adopted.
4) The task will be carried out by the most SKILLED communicator on the board.
5) You will apply the KISS principle in all respects.
6) The exercise will be measured for effectiveness: unit owners will be surveyed for FEEDBACK on how well you've communicated.

Before you can start communicating you have to know:
- who your audience is: all unit owners, one unit owner
- what the problem/issue/opportunity is: By-Law infraction, welcome to a new neighbor, advisement on potential hazard.

Answering these questions determines:
- what is your key message: what do you want to tell the audience
- what activities you will use to reach the audience: is a newsletter, a letter, a visit most appropriate?
And once the actions have been taken you will measure if your communication generated the desired results: a survey of all owners, did the By-Law infraction stop, etc.

Now this may sound complicated, but it doesn't have to take a lot of time. Decisions can be made at board meetings and once you begin using this formula regularly, it can really simplify things.

Your first board meeting annually can be used to set the basic framework: what communication activities will be undertaken this year, who will do them, the deadlines that will be met, and how you will determine if they've worked.

Adopt a procedure for dealing with written complaints: ie. it goes directly to your management firm; receipt is acknowledged by form letter within two days and the complainant is advised when the board will meet to decide action on the issue. If more information is needed the complainant is asked to supply it at or prior to the meeting. The board's decision is forwarded to the complainant within two days.

Once you've done that, tell the people who live in your condo project what your policies are.

6.1.3 What Owners Want To Know

Unit owners are not unlike shareholders or employees of a company in that they have a vested interest in the decisions

you - as their board - make. In a recent communication survey of people within 40 organizations in North America, these subjects were ranked as most interesting: plans for the future; steps taken to improve productivity; policies and practices; effects of external events on my lifestyle; financial results.

Your newsletter should include regular updates on these topics: your maintenance/upkeep plans for the month; your financial picture (on at least a quarterly basis); welcomes/farewell to neighbours; potential problems with recommended action; the date and time of your next meeting; a request for feedback and a reminder that complaints must be objective, substantiated and in writing.

You can set up a schedule for newsletter circulation: ie. one week after each board meeting. At the conclusion of each board meeting, all members can offer suggestions for what should be included so the assigned member is simply required to place it in the newsletter format.

Once you've set the policy, all you have to do is practice it.

6.1.4 Common Problems And How To Overcome Them

1) A board member presents their opinion as the consensus.
   .Communicate decisions in writing
   .Document decisions in board minutes
   .Act only on written complaints from owners
   .Substantiate individual opinions by surveying all owners
2) The board represents only some owners.
   .As in business, individuals who accept positions as board members accept a decision-making responsibility.

They are morally obligated, however, to protect the interests of ALL owners/shareholders.

.As incoming/outgoing board members repeat this theme to yourself, your neighbors

.Regular communication can keep everyone on track by holding up board decisions to owner scrutiny

3) I don't know what the rules are.

.A legitimate concern of new owners/renters

.Hand deliver a new neighbor package that contains a summary of complex rules, your latest newsletter, the names of board members and management firm, and a plate of cookies

4) The board never tells us anything.

.Issue a regular newsletter

.Create key messages to preserve your desired community culture

.Be open and available, but encourage owners to involve the board only on legitimate issues, ie. By-Law infractions, problems that affect all owners

5) An emergency occurs which requires immediate action.

.Have an emergency plan for fires, utility problems - know what your role is in such a situation

.Use your management firm resources

.Never present your opinion as a consensus board position unless it is a documented one

.If a neighbor approaches you with a problem, direct him/her to the correct channels (emergencies included).

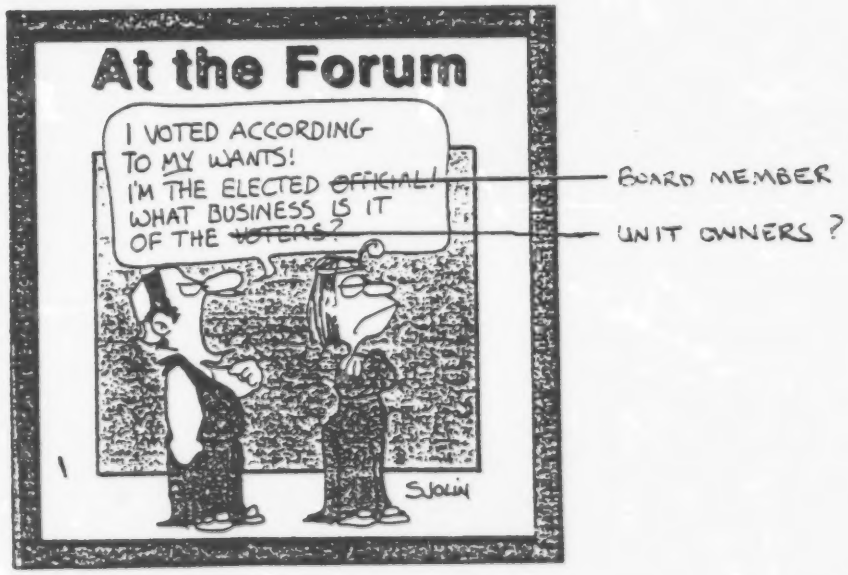
6.1.5 Wrap-Up

It's not likely that I've solved all of your communication problems. But I'd like to leave you with my key messages as they relate to communicating in condominiums.

1) Communication reflects your management style and depends on your ethics and credibility as a board of directors.

2) Good communication is based on truth-seeking and honesty.
3) Adopt a communication plan that is simple to deliver.
4) Identify key themes or messages that create the desired community culture.
5) Assign communication to board members who are the most skilled in oral, written and interpersonal communication
6) Evaluate your communication effort by seeking out feedback from owners, your management firm and the greater community if necessary.

And remember, even if you do all of this, you'll not please all of the people all of the time. But...you'll know you've tried and have not succumbed to the attitude of this elected official of Roman times:



6.2 OVERCOMING APATHY IN CONDOMINIUM OWNERS

by Dr. Henry Janzen, Consulting Psychologist,
University of Alberta

6.2.1 What Is Apathy?

The topic that was given for my presentation at the Conference is a difficult one and one in which very few research answers are found. Very little has been written about apathy in condominium owners and so I undertook to find some answers myself by interviewing owners of condominiums, managers of condominiums and executive directors of people involved in condominium associations. I have made some intuitive leaps in this paper as well as founded it on a theory which I believe is relevant to understanding the concept of apathy in condominium owners. First of all, the word apathy itself refers to a lack of interest or concern. Apathy in essence is absence of emotion and lack of caring of someone else's suffering. The Greek root of the word itself suggests an insensibility towards others, an unfeeling and uncaring state, condition of coolness and indifference. The word itself implies that people do not have the motivation to care about others and this gives rise to the whole concept of what drives people and what makes them care and what can force them to a position where they really will give due care and attention, not just to their own needs but to the needs of others?

Over some years of practice as a consultant, educator, author and practicing psychologist, I have evolved a concept of motivation and individual development that I believe to be relevant to this issue at hand. I want to develop the concept of overcoming apathy from the viewpoint of major writers, psychologists and psychiatrists, who deal with the concept of motivation and performance in organizational structures. Three central concepts form the basis of the

original model. The literature suggests that there are three basic categories of human needs. These are politico-economic, social and competence needs. These are complex concepts and I need to define them briefly. First of all, it has to be assumed that these needs are present and active in each individual from birth and that they go through the process of elaboration and growth as the individual develops. All individuals strive to have these needs met and I will show the impact on ownership of property and other areas of individual development. Each person always moves towards a state of unification and separation. When a person operates as a part of another, they tend to see themselves and their problems as pieces of a larger whole and so merge and identify with the whole. It is the whole that serves people and sustains the individual. At the same time, one's freedom is constrained by the nature of the whole and by the operation of the other parts. When a person operates on the principle of separation, they look to their own nourishment and define their own identity as well as foster their own growth individually. This often causes problems in that their own goals seem to supersede the goals of others.

Politico-economic needs serve for the maintenance of life and the enhancement of health and bodily comfort. It serves the need to be free from fear, pain and bodily harm. Politics, dealing as it does with the use and restraint of force and violence deeply effects our needs for physical freedom and the avoidance of fear, pain and harm. Economic activities produce and distribute the means of maintaining life and enhancing comfort and health. As such, people who are heavily invested in this category of need know how to use politics and power, money, goods and services towards their own ends. They usurp their rights and privileges and use signs and symbols of authority and power to meet their own needs. Only moral forces such as justice, fairness,

honesty and integrity will modify this drive towards meeting the politico-economic needs.

Social needs are equally as powerful and include the searching for friendships, acceptance, belonging, attention, love and intimacy. To meet the need, one needs to avoid loneliness, rejection and isolation. Social needs include the need for personal attractiveness and popularity and to act within an appropriate social framework and show values of friendship, openness and consideration for another person's feelings. These needs are channeled through social institutions of marriage and the family as well as through fraternal groups and organizations. One can see the social needs are indeed important ones to consider within the condominium association. When those needs are not met, apathy can certainly set in very quickly.

The third category of needs refer to competence. Competence deals with the need for knowing and doing, it speaks about achievement, productivity, creativity and the development of one's skills and abilities. When one searches for competence one avoids confusion, failure, meaninglessness and ignorance. Competence needs as they arise in the context of this paper, concern themselves with the usual conflicts or disagreement over facts and opinions, plans and judgments as they affect their lives in the condominium. When there is a disagreement over any practice within the association and controversies result, these competency needs will not be met. To activate competency needs, however, one must offer recognition and respect, praise and reputation as well as truth and wisdom.

These three basic categories of needs are not equally active in all people and so one can see that not everyone would develop goal-oriented behaviors appropriate to the goals and objectives for condominium owners. Apart from innate

differences, opportunities in a given cluster of needs vary as the environment changes and some seem stimulated to meet those needs and goals where others do not. Thus, an individual might develop the need for power or the need for friendship or the need for achievement and the demonstration of one's skills and abilities. When those who are in a responsible position within the condominium association can activate these needs, apathy will turn into energy and goals of the association will be met. But how is this done? Who owns the problem? This I will address next.

6.2.2 Who Owns The Problem?

I think it is fair to look at the question early on because who really defines whether an owner is apathetic within the condominium organization? Who is it that has the power to make this determination and sets out the goals of the organization? It seems to me that in most of the individuals that I interviewed for this paper, owners, although having voice and vote, seemed to rely on a decision-making process in which they were only one voice in a group of many. Some felt powerless to affect changes or to voice their opinions or to have their needs met according to their own goals. If there is not a sufficient sharing, discussion and debate that is relevant to each individual's own needs, apathy can very quickly set in and the problem therefore is owned by those who are in a power position within the organization when individuals in a power position do not develop goals and objectives relevant to sustaining the individual needs and motivations. They, that is, those who usurp the power, own the problem. Redefinition of ownership and power has to take place before one can address the issue of overcoming apathy in condominium owners.

Every person moves toward a position of self-definition and identity. There will always be tensions between the

opposite points of view and different orientations to what is needed and wanted by the organization. Remember, a person usually moves towards asserting his determination to be a recognized person within any organization. To oppose someone or something is in the nature of the person and results in rebellion which we see from childhood on. To move to a position of unification within an organization such as the condominium association, one needs to set up a networking whereby individuals move into relationships with others who treat the person as he or she wishes to become. When that person's desired identity is confirmed by others, apathy will turn into energy and common goal-directed behavior.

6.2.3 Psychological Implications

I want to move very quickly to six key areas that I feel have some relevance on overcoming apathy in condominium owners. There are other issues that could be discussed but these six are probably the key and involve psychological mechanisms whereby apathy can be turned into energy and goal-directed behavior.

1. Communication

Communication serves to reduce separation and build unification. As such, it addresses a major need or motivation for stability and unity between people in an organization. It is necessary therefore that the condominium owners develop a solid link of communication within each separate unit or groups of units. Communication also refers to the fact that people are able to talk to each other with positive feelings and meeting of social needs. When communication is positive people listen. When people listen they think about what needs to be done. When people are praised, when they are given recognition and when their

social needs are met, communication serves to overcome apathy and develop energy within a social unit.

2. Ownership Pride

Pride serves a purpose of movement towards the politico-economic needs, the social needs and the competence needs. Ownership pride refers to the fact that people gain recognition and respect, professional integrity and productivity within the structure of their home. To increase ownership pride therefore, one needs to give people the ability to exercise some control through legitimate authority. This authority has to be established within the condominium association and is clearly there. However, people need to feel certain rights and privileges and given signs and symbols of power and authority in order to reduce apathy. When ownership pride is high, apathy again turns into energy and goal-directed behavior. To increase ownership pride, the forces of power, the executives must be seen to deal with issues with all fairness, justice, honesty, honor and integrity. When this is seen by the individual owner, apathy is less likely to be there.

3. Ownership Cohesiveness

The implication of ownership cohesiveness refers to the fact that there are no underhanded dealings within the condominium association. People have a social identity and a social need being met through condominium ownership and cohesiveness is built when they do not feel that their views and motivations are weakened because someone is making some underhanded dealings quite apart from the organization's goals. When one increases cohesiveness between people, common goals are agreed upon and met. Cohesiveness increases friendship and consideration for another person's feelings and as such this sense of social identity must be

strongly built. Even through formal meetings or through informal parties, cohesiveness is a powerful means whereby one can overcome apathy in condominium owners.

4. Increasing Motivation

To move apathy into energy, one must motivate people towards this end. Motivation is a difficult concept and often hard to put into action. Nevertheless, owners must have some incentive towards pride in what they own. Not only pride, but adequate communication, social cohesiveness, and other factors such as avoidance of confusion and the development of one's skills and abilities, the recognition of one's talents is necessary to improve the motivation towards organization goals. As such, it is a responsibility of those in power to consider ways of motivating individuals towards common goals. Recognition of individuals needs is the usual first step towards increasing motivation towards common goals.

5. Revolving Responsibility

It seems to me that one of the key factors in my interview data suggested that where individuals take turns in leadership roles with the condominium association, apathy quickly turns to goal-directed behavior. People seem energized through responsibility. But even here one needs to be careful. Not all individuals are capable of taking responsibility for certain tasks within the organization. Nevertheless, if one is willing to relinquish power and control and give it over to the other, it builds incentive through seeing a sense of justice and fairness in the operation of the association. I would suggest therefore that revolving responsibility ought to be high on the list for overcoming apathy in a condominium owner.

6. Rules, Penalties and Rewards

I had been given the book that I'm sure all condominium owners have seen which sets out rules and rewards as well as penalties involved in the various operations within a condominium. These rules seem fairly clear but on the other hand, there are so many of them that one never knows exactly when one is broken a rule or what the penalty for it is. Rules ought to be there. Rules, however, ought to be few and penalties clear. When the rules are broken the penalties ought to be seen as just and a move made towards enactment of the penalty as quickly as possible. When this is done with fair and open communication first before instituting a penalty, one is less likely to engender apathy in the owner. Often if concrete incentives and satisfiers are suggested before a penalty is set, apathy will not be there at all. It is important for the manager to be continually aware of the possibility of an individual's response to a penalty. Managers of condominium owners must be trained in understanding people and in meeting the motivations and needs of people. Certain kinds of styles of management are more likely to build individual sensitivities and motivate people towards the goals of the organization. It is important that rules not be followed slavishly and detailed discussion and conferencing be held before any penalties are set. Such a move would improve the environment and increase acceptance, belongingness and intimacy. When social needs are met within the organization, rules very rarely have to be set. Thus, when one moves on the basis of reward rather than penalty, apathy is less likely to be a problem.

6.2.4 From Apathy To Action: A Psychologist's View

Disagreements over facts and plans as well as disagreements over judgments and standards regarding the quality and

quantity that is required to keep a condominium complex attractive and healthy, will result in lack of motivation towards ownership and pride in the condominium people. But disagreements are a part of normal living. Overcoming apathy implies that people's needs have to be met within the condominium association. Everyone has a need for physical freedom, control through legitimate authority, friendship and acceptance and achievement and productivity. Nevertheless, these needs are met in a variety of ways and often in ways quite contrary to the goals and objectives of a condominium association. The condominium association is a networking of people designed to support one's life and living and develop one's sense of identity. When the individual's desired identity is confirmed by its congruence with others, the individual experiences this as rewarding. This means that throughout the organization's operation, one must continually move towards unity within the social networking of the organization. Motivation to move towards the association goals is made a lot easier if the owner feels oneself as being a part of a loving and caring group of people who desire to maintain a positive self image not just through the physical means of the building itself but through personal integrity, friendship and love. When communication is positive, warm and clear, when pride is taken in ownership, when cohesiveness among people is stressed, when one offers revolving responsibility and when rules are discussed prior to implementation of penalties, apathy can be overcome. This is not an easy task. It often requires, at its simplest level, a discussion or communication that is honest and clear, designed to know where the other person is in their development. When condominium owners are at a stage of personal development whereby their basic needs have been met but they desire more fulfilling deeper goals in life, these owners will react less directly to the immediate withholding of a reward and more to the wider context of the situation in which the

supervisor and subordinates find themselves and his longer range objectives. Condominium owners by and large are at a stage in their life where they are moving towards a satisfaction of higher level needs, towards self actualization, self-fulfillment and meaning in life. At these higher levels of development, the individual's responses are much less predictable and more information about the person is needed in order to influence him or her successfully. In these circumstances, the manipulation of rewards and punishments is less likely to produce an effect. To remove apathy therefore, one must encompass an effective strategy that meets these higher personal goals. To do this, the organization must seek to develop a sense of respect and a positive image of each owner's strength, attractiveness and competence. One must give recognition to the owner's own sense of making decisions and not invoke power to effect change. People generally respond to empathic understanding of the other person's ideas and values, hopes and fears. Showing another person respect and attention enhances that individual's sense of himself as someone worth listening to. Charismatic leadership styles that focus on positive communication and demonstrate a vision of exciting future possibilities are effective in increasing the sense of mutuality and shared identity in the condominium association. Overcoming apathy therefore in short, means that ideas and images are presented in a way that affirms shared values, goals and ideals. It is worth noting that it is a good strategy to err in the direction of assuming that the other person is operating upon a higher level than he or she actually is. Although people are usually unresponsive to influence attempts pitched at too high a level, they may become highly antagonistic and defensive when they are treated as though they are operating at a level that they have left behind. For example, when a supervisor or manager gives overly detailed and specific directions to a new owner, the latter may be offended that

his or her professional knowledge and skills have been slighted. Reversing this approach, the manager might suggest to the owner that help will be provided on request and the owner would more likely ask for it and the competitive one would try to manage the task alone. Condominium associations usually assume that members are responsive to immediate rewards and punishments and can be managed by approval or disapproval and direction by persons exercising legitimate authority. Owners are expected to be able to forego immediate gratification in the hope of future rewards. Most people however do not operate under this system. Most people want to be recognized and have their social needs met. Stresses in owners lives can often undermine the condominium association goals and so one needs to be aware of what these stresses are. This can only be done through developing social solidarity by informal meetings within the organization. As we develop a more individualistic and ego-oriented culture, increasing numbers of people find that the organizations in which they do not belong do not offer the rewards they seek in the development of their personal identities. These people then limit their personal commitment within the organization and devote their greatest energy to leisure pursuits which offer more ego satisfactions. Organizations that offer more identity satisfactions produce energetic and goal-oriented groups. Most likely, condominiums owners, although not particularly rebellious do not wish to make trouble for the sake of asserting their own power and strength. They make use of the organization for their own purposes. For managers within the organization who are concerned with organizational goals and improvement, this developmental model of motivation is a useful tool for diagnosis and planning. Unmet needs must be recognized. Strongly held views must be discussed with empathy and active listening. Dignity, honesty and self-respect must be fostered at all levels. Increased control must be sacrificed through

revolving responsibility. Owners like all others, quickly learn through example. In theory, such moves would quickly overcome apathy but in practicality it may take more time and further consultation to be entirely free of the problem of apathy in condominium owners.

6.3 UNDERSTANDING AND COPING WITH THE DIFFERENT BEHAVIORS OF PEOPLE.

by Dr. Patricia Pitsel

6.3.1 The Sherman Tank

The Behavior

They come out on the attack. They may be abrupt, abusive, intimidating, and overwhelming. They are arbitrary and often arrogant in tone. They attack not only what you have done, but often YOU.

Understanding the Sherman Tank

They have a strong need to prove to themselves, and others that their view of the world is always right. Tasks seem very clear and concrete to them, and the way to get these tasks done is very straightforward and simple. They get impatient with those who don't see what is plainly there. They have a strong sense of what others should do. They value aggressiveness and confidence, and tend to devalue those they believe lack those qualities.

Coping With the Sherman Tank

.Give them a little time to run down.
.Don't worry about being polite; get in any way you can.
.Get their attention - call them by name
.If possible, get them to sit down.
.Maintain eye contact.
.State your own opinions and perceptions forcefully.
.Don't argue with what the other person says or try to cut him/her down.
.Be ready to be friendly.

6.3.2 The Sniper

The Behavior

They take pot shots at you. Their weapons are sotto voice remarks, not-too-subtle dogs, nonplayful teasing. They may use non-verbal actions to cover their verbal attack - smile or joke while making a hostile comment. They have learned to use to rituals and social constraints in which the victims participate to create a protected place from which to strike out at objects of anger or envy.

Understanding the Sniper

Snipers, like Sherman Tanks, have a strong sense of how others ought to think and behave. They have a strong "I'm superior" orientation which tends to interfere with seeing things from others' perspective, and what they then expect from others is often unrealistic. The Snipers are really Sherman Tanks who find themselves in a situation where it is too risky to risk a battle. Thus their attacks are often made against those who have the power to reward or punish them.

Coping with the Sniper

- .Surface the Attack.
- .Provide the Sniper with an alternative to a direct contest.
- .Seek group confirmation or denial of the sniper's criticism.
- .Prevent sniping by setting up regular problem-solving meetings.
- .Deal with the problems.
- .If you are a third party to the sniping, stay out of

the middle but do insist that it stop in front of you.

6.3.3 The Exploder

The Behavior

This is the adult version of the tantrum. There is a sudden escalation of fury to the point where objects may be thrown, blows are struck or unforgivable and unforgettable things are said.

Understanding the Exploder

The person feels both thwarted and psychologically threatened. The words or actions that represent the threat may be subtle, unintended or only partially intended. When sparked in some way, the Exploder feels first angry then blaming or suspicious.

Coping With The Exploder

- .Give them time to run down and regain self-control on their own.
- .If they don't, break into their tantrum state by saying or shouting a neutral phrase such as "Stop!"
- .Show them you take them seriously.
- .If needed and possible, get a breather and get some privacy with them.

6.3.4 The Complainer

The Behavior

Sentences in a whining, almost singsong quality that self-righteously blames and accuses. They are malcontents

who gripe ad nauseam about everything - usually with an underlying message that "someone" - usually you, should be doing something about the problems. There may be often some substance to the Complainer's accusations - it is the knack for stating problems as convincing accusations that gives such power to complaining. The "Triangular Complainer" doesn't complain at you - they complain to you about other terrible people.

Understanding the Complainer

They see themselves as powerless, unable to control what is happening. They have an image of the way things should be and a sense of injustice that they are not that way. They persist in their ritual behavior because complaining keeps them appearing blameless, innocent, and morally perfect, at least to themselves. Because of their prescriptive way of thinking, it is especially important for Complainers to validate their belief that they are without responsibility. To believe otherwise would force them to see themselves as carping hypocrites rather than as noble, if powerless, fighters for the right.

Coping With the Complainer

- .The key is to break the complainer's self-confirming cycle of passivity, blaming others, and powerlessness to insist that a problem solving perspective to taken toward their complaints.
- .Listen attentively to their complaints.
- .Acknowledge what they're saying by paraphrasing and checking out your perception of how they feel about it.
- .Don't agree with or apologize for their allegations even if, at the moment, you accept them as true.
- .Avoid the accusation-defence-reaccusation pattern.
- .State and acknowledge facts without comment.

.Try to move a problem-solving mode by:
asking specific, information questions
assigning limited fact-finding tasks
asking for the complaints in writing, but be serious and supportive about it.
.If all else fails, ask the Complainer: "How do you want the discussion to end?"

6.3.5 The Clam

The Behavior

Whenever you need information or conversation, you get a yep, nope, maybe a grunt, most likely nothing. They are silent and unresponsive people who won't or can't talk when you need information. It is often difficult to understand what the silence or lack of response means.

Understanding the Clam

There are a wide variety of Clams, but they have learned unresponsiveness in general because it provides a number of short-run benefits. If provides a noncommittal way of handling potentially painful interpersonal situations. Silence could be calculated aggression. If you want to hurt or control people who want or need communication, nothing quite matches in finesse and general safety the obviously purposeful withholding of conversation. Clamming up may also be a way of evading themselves. Spoken words give concrete reality to thought and feelings. To articulate to another, secret thoughts, fears or aspirations is to face the fact that you have them. How much safer to keep the words safely unspoken.

Coping with the Clam

.Ask open-ended questions.
.Use the friendly, silent stare.
.Don't fill the space.
.Comment on what's happening.
.Recycle if necessary.
.Help break the tension.
."Can you talk about what makes it difficult to say what you're thinking."
."Are you concerned about my reaction to what you'd like to say?"
."What's the thought?"
."You look distressed."
."Don't worry about starting at the beginning, what's on your mind right now?"
.Set time limits, but plan enough time to allow you to wait with composure.

When the Clam Answers "I Don't Know"

.Assume that the "I don't know" is genuine and try one of the questions above.
.Reply "what else"? and expect an answer.
.Comment on the fact that your meeting seems to be at an impasse and return to your friendly, silent stare.

If the Clam Stays Closed

.Avoid the polite ending.
.Follow through.

6.3.6 The Superagreeable

The Behavior

They always tell you things that are satisfying to hear. They leave you believing they are in agreement with all your plans only to let you down. They often use humor as a way to ease a conversation, and while the humor is chiefly intended as an expression of intimacy rather than as a dig, it is sometimes used as a way of sending serious messages.

Understanding the Behavior

They need to be liked or at least accepted by every single person all of the time. They want to avoid conflict, so they often make unrealistic commitments so that conflict will not occur. Because it is a useful method of gaining acceptance, they make others feel liked and approved of. They become difficult people only when their needs to give and receive friendship conflict with negative aspects of reality.

Coping With the Superagreeable

- .Surface the underlying facts and issues that prevent the Superagreeables from taking action.
- .Let them know that you value them as people by telling them directly.
- .Asking or remarking about family, hobbies, etc.
- .Ask them them to tell you about those things that might interfere with your good relationship.
- .Be ready to compromise and negotiate if open conflict is in the wind.
- .Listen to the Superagreeables' humor. There may be hidden messages in those quips or teasing remarks.

6.3.7 The Negativist

They respond to anyone else's productive suggestion with: "It won't work. It's no use trying" or "We tried that before and it flopped." While at times personally capable, have a deep-seated conviction that any task not in their own hands will fail. Their negativism is elicited by others' attempts to solve a problem or improve a procedure. Because they believe that others in power don't care or are self-serving, their negative statements are made with conviction.

Understanding the Negativists

They gain power over others because they tap the potential for despair in each of us. Negativists truly feel dispirited and defeated. They are not by intention obstructionists to every scheme but really believe that the blocking forces are out of their, or any ordinary person's control. They are convinced that they have little power over their own lives. Fate, in the form of overpowering natural or manmade forces, intervenes at every front, never completely within everyone's power to contain. They are people who, in their developing years, were unable to work through a basic human disappointment. There is a loss of faith in the future. They see instead a constant flow of reasons why life events cannot be dealt with in a positive way.

Coping With Negativists

- Be alert to the potential, in yourself and in others in your group, for being dragged down into despair.
- Make optimistic but realistic statements about past successes in solving similar problems.

.Don't try to argue the Negativists out of their pessimism.
.Do not offer solution-alternatives yourself until the problem has been thoroughly discussed.
.When an alternative solution is being seriously considered, quickly raise the question yourself of negative events that might occur if the alternative were implemented.
.See the doomsayings of the Negativists in perspective as potential problems to be overcome.
.At length, be ready to take action on your own.
.Announce your plans to do this without equivocation.
.Beware of eliciting negativistic responses from highly analytical people by asking them to act before they feel ready.

6.3.8 The Know-It-Alls

The Behavior of the Bulldozer Know-It-All

There is a tone of absolute certainty, of sureness beyond mortal doubt, that, often without conscious intent, leaves others feeling like objects of condescenion. They often leave others feeling inept, confused or stupid because they usually do turn out to be absolutely right. They make their associates feel resentful and often elicit resistant, self-defeating behavior from them. They leave little room for anyone else's judgment, creativity or resourcefulness. Once they set out to implement a plan of action, they are hard to dissuade even when their plan appears to others to be headed for failure. If things do go wrong, they often see the fault as lying with those incompetents who were responsible for carrying it out.

Understanding the Bulldozer-Know-It-All

Early parental certainty represented security in an often inconsistent and changing world. The lesson is that know what the facts are, know how they fit together and only then can you feel secure. They believe that the knowledge they hold is the stabilizing force in their world and the certainty that their theories, facts and procedures are correct makes sane a world otherwise too unpredictable to contemplate. They believe that most of the power to affect their own lives resides in them, so they tend to see the ideas and formulations of others as irrelevant to their own purposes.

Coping With Bulldozer Know-It-Alls

- Make sure you have done a thorough job of preparing yourself: carefully review all pertinent materials and check them for accuracy.
- Listen carefully and paraphrase back the main points of the Bulldozer's proposals, thus avoiding over explanation.
- Avoid dogmatic statements.
- To disagree, be tentative, yet don't equivocate; use the questioning form to raise problems.
- Ask extensional questions to assist in the re-examination of plans.
- Watch your own bulldozing tendencies by:
  listening for Know-It-All behavior in yourself
  conveying your appreciation of the Bulldozer's knowledge
  proposing delays in action to gain time for each to review the other's proposals.

.As a last resort, choose to subordinate yourself to avoid static and perhaps to build a relationship of equality in the future.

The Behavior of the Balloon Know-It-All

Balloons speak with great authority about subjects of which they have little knowledge. They may ready a newspaper and become an instant expert. They are, unlike the Bulldozers, phoney experts, ranging in scope from inept braggarts, easily seen through to pompous and imperious tyrants. They are not simply liars or con-artists - at the moment they believe that they do know what they are talking about.

Understanding the Balloon-Know-It-All

.They seek the admiration and respect of others by acting like experts when they are not.
.They are only partially aware that they are speaking beyond their knowledge.
.They are often curious and alert to information. This useful quality leads to trouble only when sketchy or abbreviated information is asserted as a full and accurate picture of the situation.

Coping With the Balloon Know-It-All

.State correct facts or alternative opinions as descriptively as possible and as your own perceptions of reality.
.Provide a means for the Balloon to save face.
.Be ready to fill the conversation gap yourself.
.Cope with a Balloon when he/she is alone, when possible.

6.3.9 The Indecisive Staller

The Behavior

These are individuals who can't make up their mind and tend to stall off major decisions until they go away. They become a problem when something in your own life depends on their taking action. Stallers do not simply prolong the decision making process, they avoid it, sometimes to absurd and unproductive limits. They are almost always pleasant and supportive, especially when they are sitting on your decision.

Understanding the Indecisive Staller

Stallers are super-helpful, indecisive people who post-pone decisions that might distress someone. This "works" because as life proceeds, most decisions, if unmade, quickly become irrelevant. Stallers hint and beat around the bush as a compromise between being honest and not hurting anyone.

Coping With Stallers

- .Make it easy for Stallers to tell you about conflicts or reservations that prevent the decision.
- .Listen for indirect words, hesitations, and admissions that may provide clues to problem areas.
- .When you have surfaced the issues, help Stallers solve their problems with the decision.
- .At times, the Staller's reservation will be about you, so:
  acknowledge any past problem
  state relevant data nondefensively
  propose a plan
  ask for help
- .If you are not part of the problem, help the Staller

examine facts. Use the facts to place alternative solutions in priority order. This makes it easier if the Staller has to turn someone else down.

.If real, emphasize the quality and service aspects of your proposal.

.Give support after the decision seems to have been made.

.If possible, keep the action steps in your hands.

.Watch for sings of abrupt anger or withdrawal from the conversation. If you see them, try to remove the Staller from the decision situation.

6.3.10 The Basic Coping Steps

Assess the Situation

1. Has the person in question usually acted differently in some similar situations?
2. Am I reacting out of proportion to what the situation warrants?
3. Was there a particular incident that triggered the troublesome behavior?
4. Will direct, open discussion relieve the situation?

Stop Wishing They Were Different

1. Blaming isn't changing.
2. Give up the magical wish.

Get Some Distance Between You and the Difficult Behavior

1. Labeling can help.
2. Understanding can help.

Formulate a Plan for Interrupting the Interaction

1. Understand the behavior cycle.
2. Change the nature of the interaction.

Implement Your Strategy

1. Timing
2. Preparation

Monitor the Progress of Your Coping and Modify When Appropriate

1. Physical distance
2. Organizational distance

7.0 LEGAL ISSUES

7.0 LEGAL ISSUES

by Ronald Clarke

7.1 RECENT CASES

Insofar as recent court decisions are concerned it's been pretty quiet in South Alberta. I'm enclosing brief summaries of two (2) condominium cases that were heard by a Provincial Court (Small Claims) Judge during the past year, namely Ansell v. Woodland Place Condominium Corporation and Schock v. Hallmark Estates Condominium Corporation.

I'm hoping that my learned friends, Mr. Mirth and/or Mr. Kramer, will comment on the Yellowbird Condominium Corporation Edmonton court reference and how and whether they can rationalize that decision in light of the Country Club Estates case decided two months later by the Saskatchewan Court of Queen's Bench.

Being a little concerned about Small Claims Court procedures, its jurisdictional and legal limitations and wishing to obtain judicial pronouncements by and perhaps precedents from a higher court, a Calgary condominium corporation is making an application to Court of Queen's Bench for a declaration under Rule 410(e) of the Rules of Court. In this particular case, the corporation and the unit owner have agreed upon a statement of facts dealing with a question of whether certain decks constitute unit or common property and whether the corporation or the unit owner is responsible for the repair or replacement of those decks. In addition to presenting that statement of facts, the parties will produce the condominium Plan, the By-Laws and written legal briefs and argue the matter orally before a Justice of the Court of Queen's Bench in Chambers. It is hoped that this procedure will be speedy, cost efficient and give clear and concise directions to the parties which will

constitute at least persuasive precedent in similar circumstances in the future.

Since terminology is still a problem in our infant industry, I,m enclosing a Glossary of "Buzz" words and a "Glossary of Terms" which may be useful as a reference source for legal terms definition throughout the conference.

7.1.1 Ansell V. Woodland Place Condominium Corporation

On October 5, 1987, the Court of Queen's Bench (Justice Medhurst) sat on the appeal of a Small Claims Court decision by the Woodland Place Condominium Corporation. At the trial level, Judge Blackstone had indicated that the Corporation should have given the defendant unit owner an opportunity to appear before the Board of Managers to make representations and provide a defense to the Board's claim of By-Law Breach (unauthorized erection of a cat cage or run structure comprised of 2 x 4 lumber and chicken wire affixed to the exterior of the unit). He also stated that the By-Law infraction was not substantial or serious enough to justify the levying of a fine. Other issues related to the amount of recoverable legal costs and interest on certain fees arrears.

The thrust of Justice Medhurst's unwritten opinion was fundamentally the same as that of Judge Blackstone. Basing his views on general administrative law, he held that the Board should have invited the defendant to a meeting to make her case and presumably act as a quasi-judicial body in considering the problem, applying concepts of natural justice and, if appropriate, levying a penalty of up to $200.00. It was also implied that only after such a hearing could the Corporation take proceedings under Section 29 of The Act. He also echoed Judge Blackstone's view that the violation was not "serious" enough to justify a fine.

Many of us in The Institute are concerned about this decision as we did not feel that a Board of Managers hearing was a legal prerequisite to proceeding against a defaulter in court. We believe it is not a positive step in the advancement of the condominium lifestyle and are particularly concerned that corporations may have to establish the fairness or reasonableness of their By-Laws and that the complaint or breach is sufficiently "serious" to convince a court to levy the penalty. The amount of costs that might be recoverable has not been decided but it appears that if solicitor-client costs are sought, that must be pleaded in the court documents.

7.1.2 Schock V. Hallmark Estates Condominium Corporation

In 1986, unit owner Frieda Schock commenced an action in Small Claims Court against the Hallmark Estates Condominium Corporation. She had purchased a unit in the project in August 1985 and claimed, amongst other things, that:

1. She didn't have to pay condominium fees until November 1, 1985 because she alleged that the management company had advised her to that effect. She also argued that she was not legally bound to pay the legal costs associated with the arrears Caveat and charged to her arrears account;
2. The Corporation had no right to insist that she provide drawings, engineering reports, etc. on her proposed renovations which affected both unit and common property as a condition precedent of approval because she had received a building permit from the City of Calgary authorizing the work;
3. The Corporation failed to approve her renovation request in a timely manner and that she suffered various damages as a result;

4. She was not strictly bound by the registered By-Laws because no one had apparently passed her a copy thereof;
5. The Corporation was bound to provide her with common property storage space since her vendor had represented in the Offer to Purchase that she was entitled to such a space;
6. The Corporation was responsible for paying for the addition of certain electrical and safety equipment required to be added by the City of Calgary and the costs of her renovations consultants.

She was unsuccessful on all claims before the Small Claims Court. On appeal to the Court of Queen's Bench she put in her case again and, after cross-examination, the counsel for the condominium Corporation elected to call no evidence. The Court dismissed the appeal with costs to the Corporation.

While neither judgment is reported and both oral decisions were very brief, I believe certain rulings flow from the case by implication:

(a) The Corporation had issued an estoppel certificate certifying payment of fees to August 31, 1985 only and delivered the certificate to Ms. Schock's solicitor and she was bound by it;
(b) The By-Laws clearly gave the Board of the Corporation the power to restrict and govern owner initiated improvements that touched on the common property regardless of the issuing of an municipal building permit. (The Judge remarked that if Ms. Schock wanted to renovate the structure of her home without permission she should have purchased a non-condominium home);

(c) Ms. Schock was legally bound by all of the provisions of the By-Laws whether or not she had actually received a copy of those By-Laws;

(d) The Corporation, having formally and positively responded to the renovation request within approximately 45 days, had acted reasonably and in good time. (Ms. Schock had actually sought the Board's approval but then immediately proceeded with her renovations without waiting for a response.)

The Corporation's case was thorough and well prepared and documented by its solicitor and Ms. Schock's sometimes vague, unclear, rambling and unproved allegations were dealt with summarily and dismissed by both Courts. Both Courts confirmed the binding effect of the registered By-Laws on all concerned. The Court's recognition of the powers of the Board to control owner initiated common property improvements and to collect interest at the By-Law specified rate on the arrears, while not particularly novel, are reassuring and reflect a growing awareness by the courts of how condominium really works and the need to support the actions of corporations acting bona fide in an attempt to fulfill their duties and obligations.

NOTE: Unfortunately, the Corporation had to bear the full fees and disbursements of its counsel reduced only by the award of $5.00 costs at the Small Claims level and $100.00 on the appeal. The Hallmark Estates Condominium Corporation and its officers are to be commended for standing their ground over a period of two years and fending off a wide variety of claims by the Plaintiff. It should also be noted that the management company was named as a Defendant and its was similarly exonerated.

7.2 GLOSSARY OF "BUZZ" WORDS

"THE ACT" - The Condominium Property Act is the prime source for the creation, sale, structuring, management, insuring, taxing, division of powers and legal framework for condominiums. Remember that each province has a different statute and each is foreign to the others which creates problems for unit owners moving from one province to another. For example, the Ontario term, "common elements" is foreign to us. Our term is "common property". Rules respecting auditors, reserve funds, changing By-Laws (and rules), budgets and disclosure requirements vary widely from province to province. Also bear in mind that if your condominium corporation wants to do something that doesn't fall under some general power in The Act that action is probably ultra vires (beyond its powers) and you can't effectively alter a provision of The Act by passing a By-Laws amendment. For example, a condominium corporation can't purchase a unit for its caretaker without securing a special resolution even though Section 30(3) uses the word "may". Similarly, you can't assess condominium fees on anything but a unit factor basis as that's the only power enunciated in the Act. All Board Members and professionals should obtain a current office copy of The Act and read it! That $4.00 expenditure may save your corporation many thousands down the road to say nothing of reducing your legal fees.

"ByLaws" - At the moment of your condominium Plan registration the By-Laws in Appendix 1 or Appendix 2 (pre May 16, 1978 projects only) came into effect and yet I doubt whether one condominium corporation represented here is currently bound by them. Those Appendixed By-Laws are not part of The Act and not only may be but almost invariably are amended and replaced by more detailed, site specific By-Laws. For example, By-Law 33 of the Appendixed By-Laws

makes creation of a Capital Replacement Reserve Fund mandatory but few replacement By-Laws contain this language. I can't tell you how often I've seen auditors place a "Note" in the Financial Statements indicating that a reserve fund is required under Alberta statutory law. Establishing a reserve fund may be a general legal requirement but it's not a statutory one.

"Condominium Corporation" - Condominium unit owners constitute a Corporation on Plan registration, not an association or a social club. That Corporation's activities and powers are governed by The Act (and probably by general corporate law) and its By-Laws. It has only one legal name - "The Owners: Condominium Plan No. _____ " (the seven digit number given to the Plan on registration). It is, however, recommended, that every corporation adopt a commonly known name for ease of reference as it's difficult to remember the seven digit number. While the Corporation owns assets like maintenance equipment, its reserve fund and any property it may have purchased in its own name, it owns no portion of the common property even though it is the sole body that can manage and administer that common property.

Take a good look at Section 23(3) of The Act. The Board of Managers (Similar to a board of directors of a business corporation) has very broad ranging and absolute powers. Between annual general meetings it runs the condominium project in the manner it deems fit subject only to the terms of the Act and any direction given or restriction imposed at a general meeting. It has the duty and power to conduct the affairs of the development and, provided it complies with The Act and the By-Laws and acts in good faith, it need not fear recrimination from unit owners who, for the most part, expect and are entitled to that leadership.

Consider the annual budget. The Board not only should but must ensure that adequate funds are available to manage and preserve the project and it doesn't need the approval of a general meeting to make that Budget legally binding on all unit owners. So do the best you can employing the resources available to you and if that means the fees must double, do it! Trying to be popular with unit owners by cutting maintenance expenses to the bone, reducing your reserves and failing to provide for adequate insurance will lead to far more problems and later recriminations than making increases in condominium fees.

"Unit" and "Common Property" - The only sure way of determining what constitutes unit property or common property is by reference to the condominium Plan (not the By-Laws, which cannot change the Plan). If your Plan Number commences with the numbers 78 or lower you probably have a "midpoint" definition which means less common property exists than under the post January 1, 1979 Plans. Of course, the more common property the Board must maintain and replace, the higher the condominium fees must be to meet those obligations. Remember, if the property in question isn't part of the unit, it's common property and the Board is required to maintain it. A great deal of discord arises in condominium developments where Boards who treat condominium funds as their private preserve (rather than as trustees) are constantly trying to increase the maintenance obligations of unit owners by denying responsibility for making plumbing, electrical, mechanical and basement repairs.

"Replacement Reserve Funds", "Contingency Funds" and "Capital Addition Funds" - The portions of the common property that will have to be replaced during the normal life of the overall project can be ascertained with some degree of certainty, particularly if the condominium

corporation has commissioned an engineered reserve fund study. Contingency Funds should be set aside to provide for unexpected occurrences and emergency repairs. Capital Additions i.e. adding extra lighting or screen doors, should only be made from sinking funds set aside over a period of years expressly for that purpose.

"Special Assessment" - The term commonly used to define an assessment made on unit owners in accordance with their unit factors which is above and beyond that of the budgeted condominium fees. Most By-Laws outline the mechanics for properly levying a special assessment which is collectible in the same manner as standard condominium fees. The need to levy a special assessment usually arises where a corporation has not made provision for an adequate replacement or contingency reserve.

"Estoppel Certificate" - See definition attached. A condominium corporation is legally prevented or denied the right to claim any relief or protection based on an error in that Certificate (but note the recent Ontario case where a corporation avoided its representations to a unit purchaser on a strict interpretation of language similar to that of Section 31(3)). The corporation must certify certain matters relating to fees payment status under Section 31 but note that such certification is not required for the information provided under Section 36.

"Budget" - Boards should, as a result of Judge Brennan's 1985 decision in Co-op Centre Credit Union v. The Owners: Condominium Plan No. 801 0427, be extremely careful in adopting their budgets and assessing condominium fees.

"Exclusive Use Common Property" - is still common property and the corporation probably cannot avoid its general duty to at least structurally maintain that common property.

Coincidentally, while the unit owner may exclude other unit owners from the area, the corporation still has ultimate dominion over that area. Unless that area is surveyed and identified on the condominium Plan, it will be difficult to formally lease it to the adjacent owner. (See Section 6 (1)) under Section 41.

"Caveat" - While corporations may, by virtue of Sections 31 and 33 of The Act, register Caveats or warnings against the titles of unit owners who are in arrears of condominium fees payments or who fail to pay over a rental security deposit, in my view, its power to Caveat is limited to those two matters unless it can bring its claim under the definition set out in the Land Titles Act by establishing an "interest in Land". Other remedies (See Section 26 (5), 29 and 71) are established for breach of By-Laws by a unit owner and a condominium corporation may expose itself to a successful claim for damages if it registers Caveats based on other issues.

"Unit Factor" - Condominium corporations can only assess condominium fees to the unit owners in the ratios of their unit factors. A number of condominium corporations have attempted to levy fees on an equal basis amongst the units or have segregated certain common expenses and charged them to certain classes of unit owners. I don't believe a condominium corporation has the power to right a perceived wrong in the original allocation of unit factors by assessing condominium fees based on its own formula even if it amends the By-Laws to support its approach. Imagine the problems some of these condominium corporations will encounter when, years later, a unit owner demands a proper accounting of condominium fee assessments.

7.3 DISPELLING A FEW MYTHS

A unit owner has no right to receive his unit factor portion of the condominium corporation's surplus funds, reserve funds or equipment when he sells his unit notwithstanding a reference in the Financial Statements to "Owners' Equity".

A Management company's employees bond will provide cold comfort to a condominium corporation in the event of misappropriation of reserve funds. The bond should be directly contracted for by the condominium corporation.

Unless he is contractually bound to do so, a unit owner need not provide an Estoppel Certificate or any disclosure information to a new purchaser.

A condominium corporation does not own the common property but is responsible for its maintenance and replacement. Each unit owner owns an undivided interest in the common property equal to his unit factor share but that doesn't entitle him to claim any specific part of the common property or assets of the condominium corporation as his own.

Provided a mortgagee has given written notice of its interest to a condominium corporation, it can preempt the unit owner's right to vote.

A condominium corporation cannot restrict rentals but, provided its By-Laws authorize it to do so, it can control tenancy situations. (See Sections 44 - 48 of The Act)

A condominium corporation cannot prosecute a unit owner in Small Claims Court under Section 29 unless its By-Laws authorize it do so.

A condominium corporation is probably a corporation for purposes of the Income Tax Act and is legally required to file a tax return annually. Most corporations do not have taxable income. Practically speaking, the CCI suggests that condominium corporations not file returns unless they receive a demand from Revenue Canada.

There is no statutory requirement for an audit although a condominium corporation's By-Laws may require it. The auditor should be appointed at the Annual General Meeting.

Municipal property tax assessment appeals do not fall within the powers of a corporation or its Board of Managers although a Board might be constituted as an agent if it is appointed by unanimous resolution.

If it might be a Board responsibility, it probably is!

7.4 GLOSSARY OF TERMS

"Act" means the Condominium Property Act, Revised Statutes of Alberta 1980, Chapter C-22.

"Assets of a Corporation" means real and personal property acquired for the use, maintenance and enjoyment of the common property and includes such items as surplus funds, the replacement reserve fund, maintenance equipment, etc. These assets are not distributable to the owners except on termination of the Corporation.

"Board of Managers or The Board" means the group of registered unit owners or other qualified persons, i.e. representatives of Mortgagees (sometimes even tenants or non-owners) (generally from 3 to 7 in number) elected by the unit owners at General Meetings to supervise and manage the project on behalf of all the units owners. Their position is not dissimilar to members of a Board of Directors of a company incorporated under the Business Corporation Act. The Board has a duty to comply with the Act and the By-Laws and to compel compliance by the unit owners.

"By-Laws" means the rules and regulations supplemental to the Act which govern operational aspects of the Corporation, owners and the Board.

"Caveat" means a notice or warning under the Act or the Alberta Land Titles Act and may be registered for numerous reasons. Under the Act, a Corporation may register a Caveat against the title of a defaulting owner's unit to give notice of unpaid condominium fees or, in a rental situation, failure to provide a common property security deposit.

"Common Expenses" means the expenses incurred by the condominium Corporation in maintaining the common property

and in carrying out the duties and responsibilities specified in the Act and the By-Laws. The unit factor share of these expenses borne by an owner are usually referred to as condominium fees.

"Common Property" means all that portion of the project which is not comprised of units, normally everything from the midpoint of walls, ceilings and floor of each unit outwards. Exteriors of the units, balconies, roads, walkways, privacy areas, storage sheds, parking areas and recreational facilities usually form part of the common property. Condominiums created since January 1, 1979 generally limit the boundaries of the unit to the interior finishing of the unit i.e. "paint to paint" or basically the air space, making virtually all of the physical structure common property. The common property is shared and jointly owned by the unit owners.

"Condominium" is the term applied to a specific type of property ownership rather than to any distinct style of building. In condominium ownership, the owner owns his own unit and shares ownership in the remainder of the property with the other unit owners, which property is managed and maintained by a Board of Managers elected by the unit owners.

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"Condominium Corporation" or the "Corporation" means the legal entity or corporation created by the registration of

the condominium plan (not subject to the Business Corporation Act) and is comprised of all the owners of units that are the subject of the Plan. The owners are similar to shareholders in a typical incorporated company, but the Corporation has no share capital or incorporating documents. It does not enjoy limited liability and a judgment against it is a judgment against each owner for a portion of the judgment proportionate to his unit factor.

"Developer" means the party who developed the property, constructed the buildings thereon and normally sold the units to the owners.

"Estoppel Certificate" means a prescribed form of document issued under the corporate seal of the Corporation (or, if duly authorized by the Corporation, the Corporation's professional manager) to any person acquiring an interest in a unit, within 20 days after its receipt of a request therefor, containing specific information concerning the status of contributions by a unit owner toward common expenses and general information concerning the operation and financial stability of the Corporation.

"Exclusive Use Common Property" means those portions of the Common Property whose use is restricted to the owners of one or more units, i.e. balconies, individual parking spaces, lockers, fenced backyards, etc. Where these areas can be referenced to walls, ceilings and floors, i.e. underground parking stalls, titles may be created for those areas in which event legal ownership of the area can be transferred to the unit owner.

"Insurance Trust Agreement" means an agreement entered into between a condominium corporation and a trust company which provides for the distribution of proceeds from an insurance policy on behalf of the Corporation, the unit owners and

mortgagees. Loss under a condominium insurance policy may be paid only to the insurance trustee, or, failing such appointment to the Board of Managers.

"Management Agreement" means the agreement entered into by the condominium corporation with a property manager (whether individual or corporate) creating a principal/agent relationship between the Corporation and the manager whose authority to act as agent for the Corporation is set out in the contract. The manager generally assists the Board of Managers in carrying out the financial and physical administration of the property and assets of the Corporation.

"Unit" means those parts of the project which are individually owned. The boundaries for a unit are defined in the registered condominium plan.

"Unit Factor" means, amongst other things, the unit's share of common expenses and its undivided share of the common property. Each unit factor is expressed as a fraction with the denominator being 10,000. In most cases in Alberta, the unit factor is based on the square meters of a given unit in relation to the square meters of all other units. The unit factor for a specific unit is reflected on its certificate of title and on the condominium plan.

7.5 LITIGATION CONSIDERATIONS

by Dan Carrol, Solicitor

7.5.1 Introduction

There are many problems that can only be solved by litigation: commencement of court proceedings. Yet far too often, at the end of the day, litigants end up crying the blues, "It costs too much!" "It took too long!"

What can you do to control delay and expense? Here are some practical tips.

7.5.2 Choosing A Lawyer

A. Look for someone with experience.
B. Interview a number of firms.
C. Try to get a feel for their "approach" and choose. one with which you are comfortable.

7.5.3 The Retainer

A. Get agreement on the fee basis and billing procedure; record it in writing.
B. Monthly report and billings.
C. Ask for a preliminary opinion on the lawsuit with respect to:
    1. who is to be sued.
    2. the timetable for pleadings, document production,
       discoveries, setting down for trial; and
    3. a litigation budget drawn up between you and the lawyer.
D. Consider the role and cost of experts.
E. Legal problems to watch for

1. limitation periods; and
2. the proper plaintiff, Condo. corp or owners.

7.5.4 Mechanics

A. Pass a Board resolution authorizing the lawsuit.
B. Appoint a contact person to be responsible for all communication with the lawyer.
C. The contact person should also be responsible for gathering:
   1. your documents, and
   2. information from the various owners affected.
D. Appoint your officer for discovery early, preferably someone with knowledge (contact man avoids duplication).
E. Insist on the receipt of the monthly report and billing; follow up if you have any problems.
F. It may be helpful to invite the lawyer to a Board meeting.
G. At some time you may want the lawyer at a general meeting (watch for pitfalls).
H. Consider the role to be played by your management company if you are using one.

7.5.5 Disposition Strategies

A. Most cases settle rather than go to trial, so one of your goals is to maximize the size of any settlement.
B. Another goal is to promote timely settlement.
C. Ask you lawyer to specifically address settlement tactics and timing.
D. Evaluate offers on the basis of costs and benefits risks and likely outcomes.
E. Consider use of Alternate Dispute Resolution techniques.

7.5.6 The Aftermath

A. Recognize that you will never recover all legal and related costs, even if you win at trial.

B. Even if successful at trial, they can always appeal.

C. Inability to finance repairs will not serve as a basis for enhanced recovery if you have delayed the repair and costs go up.
Get you lawyer's advice on whether and how to proceed with repairs.

D. Recovery will virtually never fully compensate you for the loss. This can cause problems if you have, say, 50 affected owners but recover only enough to repair 30 units.

8.0 CONDOMINIUM BOARD RESPONSIBILITY FOR MAINTENANCE AND REPAIR

8.0 CONDOMINIUM BOARD RESPONSIBILITIES FOR MAINTENANCE AND REPAIR

by E. Mirth, Q.C.

With the aging of some condominium projects in Alberta the matter of duties and responsibilities of condominium boards toward maintenance and repair of common property and towards securing of funds adequate to provide for maintenance and repair is becoming increasingly topical. There are two aspects of this subject that this paper addresses. The first is what is the duty of the board generally to maintain (which includes a discussion of what is the condominium corporation's duty to maintain) the common property. The second is the extent to which the control over decisions as to the performance of those duties falls into the hands of the board and the extent to which those decisions fall into the hand of the condominium owners in general meeting.

Both of these matters were argued in a case in the Alberta Court of Queen's Bench involving a condominium in the City of Edmonton, in May of this year. The issues involved in that case and the decision of the court helped focus upon and crystallize the discussion matter for this conference.

In the early days of condominium development in Alberta it was not uncommon for condominium By-Laws to address the issue of condominium reserves for future maintenance in permissive terms only. Many By-Laws failed to address the matter at all; and projects that had statutory By-Laws (the By-Laws prescribed by the Condominium Property Act) still do not adequately address the matter. As those projects have grown in age, many reaching the age of 15 years and some even approaching 20, the impact of absent or inadequate maintenance reserves become graphically felt in the need suddenly to address heavy costs for roof repair, structural

maintenance, major restoration of concrete deterioration and so on.

Most recent condominium By-Laws have tended to stipulate mandatory allowances for future reserves. Some of them are rather arbitrary, calling for the setting aside of a reserve of 10% of the annual budget; and others leave the matter to the discretion of the Board of Directors. For those who continue to be governed by older forms of By-Laws, the process of switching over from a low-reserve or no-reserve treatment for many years to a reserve treatment that will build up reserves adequate to provide for major roof or other replacement obligations can be a traumatic experience, and certainly an expensive one for unit owners. It was precisely that kind of experience that precipitated the Alberta Court of Queen's Bench decision in May in the case of The Owners: Condominium Plan 792 2057 v. Singh et al (unreported, oral decision of Mr. Justice D.C. McDonald).

The first important issue is the question of the degree of responsibility on the part of the condominium corporation (and indirectly therefore the condominium board) for maintenance and repair of the common property. It would appear that, generally speaking, such obligation is fairly high, as the references below will indicate.

It should be remembered that a condominium corporation is a creature of statute, viz, the Condominium Property Act, R.S.A. 1980, c22. Its powers thus derive principally from that statute, although they are supplemented to some degree by s. 16 of The Interpretation Act, R.S.A. 1980, c 1-7.

The Companies Act and the Business Corporations Act do not apply to a condominium corporation: s. 20(4) of the Condominium Property Act, That is not to say that common

law corporate law principles won't apply to condominiums. They do in fact apply in many instances.

The powers and duties of the Corporation are accordingly initially assigned by the Condominium Property Act and the repair obligation or maintenance obligation is to be found in s. 30(2) of that Act:

"(2) Without restricting the generality of subsection (1), the duties of a corporation include the following:

(a) to keep in a state of good and serviceable repair and properly maintain the real and personal property of the corporation and the common property;

(b) to comply with notices or orders by any local authority or public authority requiring repairs to or work to be done in respect of the parcel.

The duty to perform such repair obligation is delegated to the board of the condominium corporation by s. 23(3) of the Act which says the following:

"(3) The powers and duties of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the Board of the Corporation."

Most condominium By-Laws, particularly those that depart from the statutory By-Laws by adoption of "tailor-made" By-Laws, also have something to say about the duty of the condominium corporation to maintain and repair. The statutory By-Laws are sadly lacking in any discussion of the responsibility for repair. While the statutory By-Laws carried forward after the 1978 Condominium Property Act amendments specifically mandate the establishment and maintenance of a capital placement reserve fund (statutory By-Law 33), there is nothing in that By-Law that goes on to discuss any standard of maintenance or repair obligation or

even to discuss what is the level at which the reserve fund must be set.

Most tailor-made By-Laws, however, will impose a clear and mandatory duty to maintain and repair. In the Singh case the By-Laws imposed a mandatory duty on the corporation to maintain and repair common property, notwithstanding reasonable wear and tear. Most By-Laws will also have some specific maintenance obligations that address particular features of the condominium property (e.g., to maintain mechanical facilities, roofs, eaves, etc.)

Accordingly, with most condominiums the statute and the By-Laws together impose an inescapable obligation on the condominium corporation to maintain common property; and that obligation probably extends to repair and restoration even of reasonable wear and tear and the general maintenance of the property to a standard of good operation throughout.

The duty to repair was discussed by the Ontario Court of Appeal a few years ago in a case called York Condominium Corp. No. 59 v. York Condominium Corp. No 87. The discussion in that case is enlightening.

The parties involved in the litigation were two condominium corporations which were part of a total comprehensive development scheme. They shared certain common elements and were obligated by their respective condominium declarations (the Ontario equivalent to Alberta's condominium By-Laws to some degree) to repair those common elements as necessary. The roof of the swimming pool, which was one of the common elements, developed a leak as a result of a structural defect. When the one condominium corporation refused to have it repaired the other corporation did so and recovered judgment from the first corporation for half the costs. The

first corporation appealed that judgment but failed on its appeal.

The Ontario Court of Appeal held that repair obligations for a condominium corporation are not to be viewed in any narrow legalistic manner. They are not to be viewed in terms that might apply, for example, to the obligation of a landlord to repair in a landlord-and-tenant situation. It had in fact been argued that recourse to landlord and tenant law, and the rather limited obligation a landlord has to maintain and repair property, should be followed. The court said the following (at page 340):

> "I cannot accept this contention. It seeks to impose on the newly-created concept of condominium ownership obligation for repairs that evolved over many years from a completely difference relationship. Condominium ownership contemplates a continuous relationship whereas the landlord-and-tenant relationship exists only for the term of the lease. The relationship between condominium owners in a condominium building is a relatively new creation of statute whereas to a great extent, landlord-and-tenant relations have been defined by the common law.
>
> ...
>
> As far as possible and with due regard for the particular mutual covenants of the individual owners the court should bring a broad and equitable approach to the resolution of their problems.
>
> Although this case does not deal with individual condominium owners within a single condominium, it is concerned with the relationship between two condominium corporations which form integral parts of a composite plan for condominium living. The development plan contemplated the mutual enjoyment and use of the pool by the occupants of both condominium corporations. The mutual enjoyment of a facility calls for a mutual obligation of repair.
>
> The concept of repair in such a situation should not be approached in a narrow legalistic manner. Rather, the court should take into account a number of considerations. They may include the relationship of the parties, the wording of their contractual obligations, the nature of the work required to affect the repairs, the facility to be

> repaired and the benefit which may be acquired by all parties if the repairs are affected compared to the detriment which might be occasioned by the failure to undertake the repairs. All pertinent factors should be taken into account to achieve as fair and equitable a result as possible.
>
> The declarations of the parties make reference to the "maintenance" and "repair" of the recreational facility. The shorter Oxford English Dictionary defines these words in part as follows:
> "Repair" -- to restore to good condition, renewal or replacement of decayed or damaged parts or by refixing what has given way; to amend;
> "Maintain" -- to keep in repair;
> There is nothing in these definitions that would restrict or narrow their meaning as contended by the appellant (the condominium corporation who did not want to contribute). Rather, giving these words their ordinary meaning, they are quite sufficient to encompass the repairs required to the roof of the pool. There is no reason why the appellant should not be obligated to pay its share for the "renewal or replacement of the decayed or damaged parts."
>
> I am strengthened in this position by the decision of the Supreme Court of Canada in Canadian Pacific Railway Company v. Grand Trunk Railway Company (1914), 49 S.C.R. 525, 20 D.L.R. 56, 17 C.R.C. 300. In that case consideration was given to the word "maintain" which appeared in a contract between the parties. It was decided that in construing the word regard should be had to the relationship between the parties and the scope and nature of their agreement. As a result, the word was held to be extensive enough to include the reconstruction of a bridge so that it could service an increased flow of traffic."

The mandatory nature of a condominium corporation's (and hence a condominium board's) maintenance obligation is also discussed in Pavlich, Condominium Law in British Columbia (Butterworth's 1983) at pages 116-118 in reference to a decision in the Australian courts. The Alberta Condominium Property Act was patterned after the New South Wales, Australia, Strata Titles legislation as it existed in 1968; and reference to Australian authority is not, as a result, obscure by any means.

The case discussed on this point is Jacklin v. Proprietors, Strata Plan No. 2795 (1975) 1. N.S. W.L.R. 15. The case involved a condominium project that had an apartment tower block and also some distance away a separate building comprising three townhouses. A portion of the common property in the area of the townhouses had been the subject of an exclusive use grant to the individual townhouse owners on terms that required the townhouse owners to maintain the area. The cost of maintenance of the common property was recovered by levy upon all of the owners in proportion to their unit entitlement (the equivalent of our unit factors in Alberta). The council (which would be the same as the board of managers in an Alberta condominium) received requests from two of the townhouse owners for repairs to be carried out to common property near their townhouses. That was refused, which generated a battle between the owners of the townhouses and the council (board) as to the extent of the responsibilities the board had for maintaining common property. The board resolved to take a certain variety of action in respect to the repairs and what they proposed was not acceptable to the townhouse owners. The board's solution to the problem involved treating the townhouse owners as a separate class of owners, delegating to the townhouse owners responsibility for administering the maintenance and repair of the townhouse common property, limiting the amount of the condominium corporation's maintenance funds to which the townhouse owners might have recourse in maintaining their common property and requiring the townhouse owners themselves to provided any additional funds required to provide for maintenance and repair of the common property adjacent to their units (absolving in the course of that the other condominium owners from any responsibility for contribution to those funds).

The townhouse owners claimed that the condominium board's resolution of the problem was a nullity. They succeeded. Indeed, even though the board's resolution was subsequently ratified by general meeting of the owners of the condominium corporation it was nonetheless overturned. The Australian court held that the board's resolution was inconsistent with the right of the townhouse owners under the Act as unit owners to have the condominium corporation administer and maintain all of the common property and raise the funds necessary therefor. The court stated (at page 24):

> "There flows from the scheme of the legislation as an incident of proprietorship of a lot a right in each proprietor to have the body corporate's duty performed in relation to all the common property at the cost and expense of all proprietors in proportion to unit entitlements. As the duty is not only to repair and maintain but also to control, manage and administer, the right of each proprietor includes the right to have the whole administration of repairs and maintenance of common property carried out by the body corporate by its servants and agents."

The corporation's resolution therefore to pass part of that responsibility on to the townhouse unit owners was invalid.

Pavlich described the operation of the case in the following terms (at pages 117-118):

> "Describing the effect of the control, administration and management sections (of the statute) as they relate to common property and the rights of an individual owner, the court stated that every proprietor has an undivided beneficial interest in every part of the common property, whether or not the part is susceptible of any use or enjoyment by that owner or of greater use or enjoyment by that proprietor as compared with any other. The Court continued:
> "Similarly, with respect to the provisions of funds for the repair and maintenance of all or any part of the common property, the legislation provides for only one fund with contributions to be levied proportionately on all proprietors irrespective of any individual proprietor's use and enjoyment thereof. Thus the ownership and financial burden of common property is to be held and shared by all proprietors in common in shares according to their

> respective unit entitlement. Consistently with this unity of approach, the duty of control, management, administration, repair and maintenance of common property, is imposed by the legislation upon the body corporate. This duty is necessarily owed to each and every proprietor."

In addressing the general responsibility assignment between the condominium corporation and owners, the New South Wales court said following at pages 23-24:

> "The general scheme of the legislation with respect to common property appears to me to be quite clear. The legislation makes, in respect of the parcel of land contained in the strata plan, a distinction between common property and the property comprised in a lot (i.e. unit). The distinction is made for a number of purposes. One is to enable the physical content of the two classes of property, the title thereto, easements in relation thereto, and proprietors' rights of use and enjoyment thereof, to be defined. Another is to enable allocation of responsibility for control, management and administration, and the repair and maintenance of the common property is taken out of the hands of the individual proprietors and imposed upon the body corporate. When I say "imposed upon" I mean that it is not made merely a subject of power in the body corporate, it is a matter of legal duty, and then, not merely by way of covenant between the body corporate and the proprietors or the proprietors inter se, but by way of express statutory duty."

Accordingly, since the Alberta statute is similar to what the New South Wales Court was dealing with in the Jacklin case, it should be fairly clear that the responsibility in Alberta for maintaining a functional standard of repair and maintenance falls upon the condominium corporation. It cannot be departed from in light of the specific assignment of duty in s. 30(2) of the Condominium Property Act. Indeed, s.30(2) calls not only for "repair and maintenance" but for "good and serviceable repair" and "proper" maintenance. That is to say, a condominium corporation has a duty, a statutory obligation, to maintain and repair (broadly to be interpreted, as per the Ontario Court of Appeal to high functional standards) the common property of

the condominium. It must do that whether it has sufficient funds or not; there is no exception in the statute for the condominium corporation that is lacking in funds to provide for its statutory duty. It must from that be likely that the statute also imposes indirectly upon the condominium corporation, as a matter of logical projection from the mandatory duty, and practical reality, the obligation to provide for that future maintenance. That must be done through the establishment of proper levies and fee assessments if levies and fee assessments are the only devices available to the condominium corporation to cover the costs of maintenance and repair statutorily mandated.

In the typical condominium, therefore, the condominium corporation (and inevitably the board who is responsible for carrying out its duties) is faced from the day of incorporation with the obligation in future to replace roofs as they need replacement, to replace concrete deterioration as it needs replacement, to paint, to rebuild broken fences and to do all the other things that are needed to maintain common property. It may allow for that in various ways including perhaps the following:
(a) the condominium board itself can physically do the work that is required to meet the maintenance standards;
(b) the condominium board can raise funds to provide for third parties to do the work as it is needed. In this regard this second alternative has itself two alternatives for handling:

(i) the establishment of advance reserve to provide for that maintenance; or

(ii) providing for the maintenance by special levy if, as and when the maintenance obligation has to be performed.

Alternative (a) is obviously impractical in most condominium situations (although it may be quite practical in a small three or four unit condominium occupied by people who are

able to do the work physically and technically). The second alternative is therefore the one most likely to be appropriate for most condominiums. It, with its two alternatives, offers some degree of flexibility. However, given the practical reality that applies to any situation of a large number of owners within the condominium corporation to try to meet its repair and maintenance obligations out of specific block levies for the heavy costs that arise from time to time. It goes without saying that a board that hits unit owners with sudden periodic levies of $1,500.00 or $2,000.00 per unit, all immediately due and payable, in order to pay for the cost of re-roofing or re-siding (or whatever else) is going at least to be unpopular and likely to be unsuccessful in the effort.

It is precisely for these kinds of reasons and considerations that most condominium corporations today maintain reserves for future maintenance and set aside on a monthly basis at relatively low cost a fund of money that will be available for both the "rainy day" and the predictable future replacement obligations the corporation will experience. It is in that context that many of the condominiums that have not previously allowed for the future maintenance obligations have in the last few years endeavored to obtain outside actuarial or engineering (or both) types of assistance to determine what reserves they should have for the future maintenance obligations.

That, in turn, has yielded the much-now-discussed "reserve fund study". The term does not label an obscure and complicated concept. It simply labels the process of assessing how a condominium is going to pay for what are its clear statutory obligations of the future.

However a condominium corporation comes to resolve the question of how much be set aside to provide for future

maintenance, there should be no doubt at all that most condominiums must, if prudence is to be the characteristic of the condominium corporation's (and the board's) actions, set aside monies for a rainy day. Much as it may rankle the owner of a unit to have to place $20.00 or $30.00 per month into the hands of an amorphous board of managers for a rainy day that may post-date any expectation of continued ownership on the part of that owner, the simple hard reality is that the condominium corporation has a statutory duty to maintain, the board has a statutory or By-Law duty to perform that maintenance obligation, and common sense and prudence requires planning for the performance of the duties.

Indeed, it would be difficult to characterize the condominium owner in a typical condominium situation who objects to the setting aside of an extra $20.00 or $30.00 per month for future reserves as anything other than "penny wise and pound foolish". There have been several examples in Ontario and at least one in Alberta where failure to provide for future maintenance (and, more to the point, determinations by condominium owners and condominium boards to decline to meet the standards of maintenance that a condominium statute and By-Laws may impose or to plan ahead for the obligations imposed) has rendered condominium units materially less valuable. Indeed, there is at least one case in Ontario where the failure to provide adequate elevator maintenance rendered a low-cost high-rise condominium almost non-functional, and certainly much less valuable, when the elevators were no longer capable of being used. It does not take much to imagine the various possibilities that could occur even on a simple townhouse project that would produce a similar result, in terms of non-usability or lack of value in a project. Unrepaired and leaking roofs will scarcely make living in units within a condominium comfortable. Dilapidated exteriors will

scarcely sell condominium units. And so on and so forth. More to the point, the statutes says that those kinds of conditions must not happen, for the condominium corporation has a mandatory duty to see that they do not happen. The Board and the corporation that allows it to happen and derogates from its statutory obligations are potentially (as per the Jacklin decision) open to action by any individual unit owner for breach of their duty and for the damages that ensue from that breach.

Given the clear assignment of duty by the statute, who has ultimate power over the question of how the duty is to be performed, the board of managers or the owners in general meeting? That is precisely the kind of issue that came before the Alberta court in the Singh case mentioned above.

In Singh, a board of managers had passed a resolution for a special reserve levy upon unit owners. A reserve fund study had been done, and it indicated that there was a short-fall or inadequacy in the existing capital replacement reserve of the condominium. The board of the day made a special levy of some $1,500.00 per unit to catch up the short-fall, although mechanisms were installed for payment of that sum over a period of several years. Owners objected to the levy and suggested that the levy should be reversed at the next general meeting of the corporation. The board referred the question of whether or not the owners in a general meeting could interfere with board decisions (such as the special levy of the board of managers) to a court by an application under the Condominium Property Act s. 60, and the provision of the Rules of Court permitting an application to be made to determine rights and interests under contracts. Several issues were raised in the application before the court, but the issues that were ruled upon by the court were the following:

(a) What is the authority of the owners of the units within the condominium to rescind a special levy?
(b) What is the authority of the members at an annual general meeting to rescind or interfere with business previously passed by a board?
(c) What are the relative duties and powers of board members and unit owners?

The court held that the power to conduct the day-to-day administration of a condominium corporation, and this corporation in particular, fell to the condominium board, and not to the owners in general meeting. While a board may be removed from office and replaced with a new board that may or may not be able to reverse the actions of a prior board (this issue was not resolved by the courts), the owners in general meeting did not have any power or right to interfere with the valid actions of a duly constituted board.

The provisions of the statute that are relevant in that regard are sections 23(3), 26 and 72(1). Section 23(3) generally assigns power to the board of managers of a corporation:
"(3) The powers and duties of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the board of the corporation."

Were it not for the limitation found in the words "subject to any restriction imposed or direction given at a general meeting" s. 23(3) would make the complete delegation to the board of all capacity and power of the condominium corporation clear. In net result in the Singh case, the "subject to" restriction did not interfere with normal principles applicable to corporate functions to the board.

For business corporations the law appears to be fairly clear that the capacity and power to carry on day-to-day administrative functions is generally left to the board of directors (although it is possible that a corporation may adopt a particular form of charter that would say otherwise). The principle on which this concept operates is that the rule is designed to secure a practical solution to the administration of affairs on behalf of a potentially large and disparate group of people (shareholders); and more to the point, to protect individual or minority member interests. In the British case of John Shaw & Sons (Salford), Limited v. Shaw (1935) 2 K.B. 113 (C.A.), Lord Justice Greer described the principle as follows at page 134.

> "A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by direction certain powers may be reserved for the shareholder in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the directors is by altering their articles, or, if opportunity arises under the articles, by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders."

The same principle has been applied in Canada: see Re: Hydro Electric Power Commission, (C.A. 1924) 55 O.L.R. 431 at page 435 where C.J. Mulock said the following:

> "The powers of shareholders in a company and of its board of directors are distinct. The shareholders elect the board, but the board alone has executive authority over the management of the company's affairs; it is accountable to the shareholders, but is not subject to their order; they have no power to engage or to dismiss employees or to direct them in the performance of their duties or to create any contracts binding upon the company. The commission

(which owned shares in the Company in question) as holder of all the shares may own the company, but ownership and control are substantially different. The board of directors stands between the ownership and the control of the company: Bullman Car Co. v. Missouri Pacific Railway Co. (1885), 115 U.S. 587."

The regulation of a condominium corporation is also provided for by its By-Laws. Section 26(1) of the statute provides the following:

"(1) the By-Laws shall regulate the corporation and provide for the control, management and administration of the units, the real and personal property of the corporation and the common property."

The By-Laws also constitute a sort of contract between the owners and the corporation, as is provided by section 26(5) of the statute:

"(5) the By-Laws bind the corporation and the owners to the same extent as if the By-Laws had been signed and sealed by the corporation and by each owner and contained covenants on the part of each owner with every other owner and with the corporation to observe and perform all the provisions of the By-laws."

The By-Laws accordingly might be equated to the articles of incorporation of a business corporation. They are part of the "charter" of the corporation on the face of which a person becomes an owner/member. Their importance, and the need for their secure continuance for the protection of owners and others who take interests in a condominium, are evidenced (and protected) by a requirement that they not be changed unless a three-quarters majority supports the change: section 26(2) of the statute.

Condominium By-Laws are similar to the charter of a business corporation. That, in turn, leads to a comparison in

principles one might draw from the following discussion of a business corporation's articles of association by Lord Justice Farwell in the old English case of Salmon v. Quinn Axtens, Limited (1908) 1 Ch. 311 (CA) at page 318:

"Stirling J. in Wood v. Odessa Waterworks Co. [(1889) 42 Ch. D. 636, 642] says:

> "The articles of association constitute a contract not merely between the shareholders and the company but between each individual shareholder and every other."
>
> "I think that that is accurate subject to this observation that it may well be that the Court would not enforce the covenant as between individual shareholders in most cases. Now the general power of the board to manage here is qualified by the stipulation which follows, that is subject to the provisions of these articles."

The Court in the Salmon case went on to discuss the provisions of the articles involved in that particular company. One of those articles was article 75 which said that the business of a company shall be managed by the board of directors who may exercise all the powers of the company subject to (inter alia) such regulations "as may be prescribed by the company in general meeting." (Note the similarity to the Condominium Property Act's s. 23(2).) There had been an attempt in this case to determine certain business issues through authorization at a general meeting of the corporation. One of the shareholders took issue with that process and did so successfully. Again the Court referred to the general principle that the assignment of administrative and business functions to the board of directors obviates any capacity on the part of the members of the corporation (shareholders in this case) to deal with such matters. Lord Justice said the following at page 319:

> "The case is, in my view, entirely governed, if not by the decision, at any rate by the reasoning of the Lord Justices in Automatic Self-Cleansing Filter Syndicate Co. v. Cunningham [(1906) 2 Ch. 34] and Gramophone and Typewritter, Ld. v. Stanley [(1908) 2 KB 89], that even a resolution of a numerical majority at a general meeting of the

> company cannot impose its will upon the directors when the articles have confided to them the control of the company's affairs. The directors are not servants to obey directions given by the shareholders as individuals; they are not agents appointed by and bound to serve the shareholders as their principles. They are persons who may by the regulations may be entrusted with the control of the business and if so entrusted they can be dis-possessed from that control only by the statutory majority which can alter the articles. Directors are not, I think, bound to comply with the directions even of all the corporators acting as individuals.
>
> That appears to me to express the true view. Any other construction might, I think, be disastrous, because it might lead to an interference by a bare majority very inimical to the interests of the minority who had come into a company on the footing that the business should be managed by the board of directors."

Pavlich, Condominium Law in British Columbia (above), suggests (at page 197-199) that the above business corporation concept should apply to the powers of a condominium board ("strata council" in British Columbia) notwithstanding a "subject to" clause similar to that in section 23(3) of the Condominium Property Act. He suggests that to be true, even though the British Columbia legislation that he describes would appear to place significant limitations on a board of directors that do not have counterparts in our Alberta Statute. (Eg. the B.C. statute has a requirement that expenditures over $500.00 must be approved by the general membership; we have no such provision).

Most condominium By-Laws add to, rather than detract from, the concept of full assignment and delegation of powers to the board of managers of the condominium. The statutory By-Laws are remarkable for their lack of attention to this function. They address the calling of meetings, the delegation of board functions to agents, the keeping of financial records and accounts; and beyond that deal largely

with matters of corporate meetings. The one specific assignment of duty and function is found in statutory By-Law 33, which makes the maintenance of a capital replacement reserve fund mandatory but says nothing about how much or how it is to be done.

The more common "tailor-made" or special By-Laws in existence in Alberta go considerably further than the statutory By-Laws in assigning powers and function. The By-Laws in the Singh case, for example, vested in the board of managers "for the benefit of the corporation" and called for the board to enforce the provisions of the By-Laws. Such assignment is usually (and was in the Singh case) expressed without any limitation.

While many By-Laws will have some limitations on the exercise of powers by a board, the limitations are very restricted. For example, it is not uncommon for a By-Law to say that a corporation's power to borrow is limited in the sense that borrowings over a certain limit require approval by special resolution. Some By-Laws will address the granting of an honorarium to board members and require general meeting approval. The board's ability to delegate powers, both in the statutory By-Laws and in commonly found tailor-made By-Laws, is also usually subject to "restrictions imposed upon or directions given at general meeting". Beyond such very specific limitations, however, it is not common to find condominium By-Laws that interfere with the full delegation of capacity and power to the condominium board.

Accordingly, with most condominiums in Alberta, the board of managers is given all the wide general powers of the corporation with very little restriction. The powers of the board members regarding the day-to-day functions of the corporation, therefore, should be similar to the powers of a

board of directors of a business corporation. The management of the corporation falls within the board's area of responsibility and fully outside the capacity of the members in general meeting. The "subject to" provision in section 23(3) of the statute may permit the corporation's members to impose limits -- as they do and in one respect have in typical By-Laws for borrowing, for honorariums and for delegation. But exercise of such limiting power, where inconsistent with the By-Laws, would require By-Law amendment (ie. a special resolution) to be achieved.

Further, exercise of any limiting power <u>if inconsistent with the statute would be impossible.</u> The mandatory provisions of the statute (for example the provisions for maintenance and repair of common property) cannot be offset by mere By-Law change: see the <u>Jacklin</u> case, above; and see section 72(1) of the Condominium Property Act, which provides that the statute applies notwithstanding any agreement to the contrary.

Accordingly, the power to act in the making of levies including capital replacement reserve levies, falls to the board of managers. The corporation itself, in the sense of members at general meeting, does not have the power to make or reverse or modify such levies. Those are matters of corporate business affairs assigned to the board of managers. That is what the court ruled in the <u>Singh</u> case.

In conclusion, it appears fairly clear that a condominium corporation has a heavy onus and obligation to maintain property and that the carrying out of that obligation or the meeting of that obligation is to be performed in virtually all cases by the board of managers of the condominium. It is also clear that the failure to perform obligations could generate an action in damages by any individual owner or mortgagee: see in that regard the <u>Jacklin</u> case described

above and also Travis v. Proprietors Stata Plan No 3740, (1969) 2 NSWR 304; or possibly even be the subject of an injunction or mandatory order.

In light of those duties and responsibilities it would seem imprudent indeed for any board of managers to depart from an adequate standard of maintenance and repair or in that regard to make inadequate provision for the cost of the same.

9.0 RESPONSIBILITIES OF DIRECTORS

9.0 THE RESPONSIBILITIES OF DIRECTORS

by Douglas McNeill A.C.C.I., R.P.M., R.I.M

Canadians generally are not aware of the important part that corporations play in their lives. There are numerous corporations registered under the Provincial Business Corporations Acts and this does not cover a vast array of companies under other acts such as banks, trust companies, insurance companies and corporations registered under the federal legislation, and last but not least, condominium corporations. Granted that many of these corporations are no longer active, nevertheless it translates into thousands of Canadians who have assumed the responsibilities of being directors. There is a fair chance that if you tap someone in your community on the shoulder he or she will be a corporation director and very often so will his/her spouse.

What exactly is a corporation director? I often wonder if this vast mass of citizens are aware of the responsibilities and the duties that they have accepted. A corporation is an entity created by law artificially and which has no existence apart from its members. It has no mind of its own. Someone has to be ultimately in charge of its activities and that is why directors were appointed. Corporations range from the very large to the small "one-man" companies. In the former, there is a vast mass of shareholders who generally know very little about the business activities. In the latter, shareholders and directors are for practical purposes the same person and carry on the company's activities as if it were their own privately owned business.

It is not uncommon in the United Kingdom for companies to be formed with a prestigious board of directors. Thus Lord X or the Marquis of Y might be appointed not on the strength of his business acumen but primarily because he had a title

and was a well known figure. In reality these noble gentlemen would know very little about what was happening in the company and would merely be lending their name in return for attending a few directors meetings a year where they would rubber stamp decisions made by the business managers. There was a celebrated case in 1925 where the City Equitable Fire Insurance Company in London collapsed due to dishonesty of the general manager. Vast sums were lost by the shareholders. Were the directors responsible because they had failed to detect his wrong doing or to check the activities of employees? In that case the Court said that the directors were only required to exercise a limited degree of skill or diligence. It was only if they showed a high degree of carelessness that they were responsible. They were not bound to attend directors meetings or to give constant attention to the company's business. However, those tests which were followed for a long time in Canada have since been changed by our legislation. Today the Business Corporations Acts spell out the duties of directors and requires that:

1. they act honestly and in good faith with a view to the best interests of the corporation; and

2. exercise the care that a reasonably prudent person would exercise under the circumstances.

This tells us under the first test that the director is appointed for the benefit of the corporation as a whole and not for his own benefit. He acts in what is called a fiduciary capacity. Applying that test he cannot try to gain privately an advantage for himself at the expense of the corporation; for example, by receiving excessive payment as a director or by acquiring additional shares at a premium price. He cannot enter a contract personally where it involves an activity from which a company could profit.

On the second test, the diligence shown by a prudent man, the circumstances in each case would have to be looked at. In a large corporation with accountants, auditors and a skilled manager the director is entitled to rely on what these people tell him. It is not a full-time job. At the very least a "reasonably prudent person" (and that is what a director has to be) should:

1. know what his duties are;

2. become generally familiar with the corporation's business and operations;

3. attend directors meetings on every occasion possible;

4. read the material furnished to him and require the furnishing of financial material on a regular basis;

5. satisfy himself that the officers and managers are competent;

6. ensure that a proper audit or check is being maintained at all times;

7. if he has any grounds for suspicion he should follow these up by requiring reports or obtaining professional advice; if any irregularity comes to his attention he must follow this up;

8. should avoid self interest in arriving a business decisions in respect of the corporation's activities.

If a director fails to carry out his duties he is likely to find himself on the firing line if the corporation should collapse. This is becoming more and more common in Canada, particularly with the collapse of large business organizations. Several multi-million dollar actions have been instituted recently against directors of collapsed corporations by shareholders and/or creditors on the basis that they failed to carry out their responsibilities as directors.

In addition to the duties generally outlined above a director assumes personal responsibilities where:

1. certain tax remittances are not made to the Tax Department in respect of employees;

2. for staff wages.

No one should agree to become a director without being fully aware of what responsibilities are being assumed. There should be a careful discussion with the parties' accountant and/or solicitor where the advantages and disadvantages (and indeed as you will see there are disadvantages) are carefully weighed out. If a director does not do so, he may learn the hard way that the position is not indeed merely an honorary post.

In a presentation of this nature, it is not possible to cover all the possibilities or indeed even a small fraction thereof. Generally what I have intended is to warn you of some of the dangers. This presentation in no way is intended to replace the functions of your accountant or lawyer and in dealing with your own particular case those circumstances should be considered and reviewed individually in order to ascertain the extent to which the directors' duties apply and/or to ascertain what means there are

available in a particular case of lessening the responsibility if it becomes necessary or desirable to be a director.

Having said all of this you may wonder what relationship it has to a condominium corporation. The catch word is "corporation". Even though you are doing a voluntary job as a director or officer on the board of managers you are still charged with all of the responsibilities outlined previously.

When you are elected, or volunteer, or are "Shanghaied" as a board member make sure you know what your responsibilities are. Becoming an officer ie. President, Chairman, Vice-President, Secretary, Treasurer, you must know your responsibilities. Not only are you responsible if you accept any of these positions, you carry a degree of responsibility should you elect a person to these positions who is not qualified. You are a registered director.

Maybe the next question is "Should I even become a director or officer", all I want to do is become involved in my home investment and my surrounding lifestyle.

"BY ALL MEANS DO SO!"

BE PREPARED FOR THE "SELF PROTECTION"

"LEARN HOW TO READ A FINANCIAL STATEMENT"

"SET ABOUT LEARNING THE PAST HISTORY OF THE PHYSICAL ASPECTS OF YOUR COMPLEX."

"QUESTION ALL DECISIONS OF YOUR BOARD"

"DON'T VOTE FOR ANYTHING UNLESS YOU FULLY UNDERSTAND ALL OF THE PROS AND CONS OF YOUR DECISION"

"WHEN YOU VOTE AGAINST A MOTION OR ACTION, MAKE SURE THAT YOUR NEGATIVE VOTE IS RECORDED IN THE MINUTES."

"MAKE SURE YOUR COMPLEX HAS ADEQUATE INSURANCE. MOST CORPORATIONS CARRY ONLY ONE MILLION DOLLARS LIABILITY INSURANCE. WITH TODAY'S JUDICIAL AWARDS THIS IS MINIMAL INSURANCE. UMBRELLA LIABILITY INSURANCE IS AVAILABLE AT MINIMAL COST. LOOK AT AN EXTRA FIVE MILLION DOLLARS".

LAST BUT MOST IMPORTANT, MAKE SURE YOU ARE COVERED WITH DIRECTORS AND OFFICERS INDEMNIFICATION INSURANCE THROUGH YOUR CORPORATION. AN ACTION CAN BE BROUGHT AGAINST YOU NOT ONLY FOR THE DECISIONS YOU MAKE, BUT ALSO FOR THE DECISIONS YOU DO NOT MAKE. THIS MAY SOUND FAR FETCHED BUT IF WHILE YOU ARE HERE YOU SPOT ONE OF OUR LEGAL FRIENDS, ASK HIM OR HER. YOU MUST DEFEND YOURSELF AGAINST ANY ACTION BROUGHT AGAINST YOU, YOU MUST CREATE A DEFENSE OTHERWISE THERE IS THE POSSIBILITY OF A DEFAULT JUDGMENT.

SO THE FINAL ADVICE OF THIS PRESENTATION IS:

BECOME INVOLVED.

KNOW YOUR RESPONSIBILITIES.

FIND OUT <u>ALL</u> THE FACTS.

10.0 THE TENDERING PROCESS

10.0 THE TENDERING PROCESS

by Rory McCormick

The tendering process is employed in construction projects to provide an owner or builder with the opportunity to obtain the most competitive price to complete its particular construction project.

10.1 THE LAW OF TENDER

In law the process results in nothing more than the formation of a contract. Hence, the general principles of contractual law apply.

1. The Call for Bids
   The call for bids is aimed at advising the industry that a particular job is available. It must provide sufficient information to allow potential bidders to make an informed bid. In contractual theory, the call is not an "offer" in itself, but can rather be referred to as an "invitation to treat".

2. The Bid or Tender
   The bid or tender is nothing more nor less than a contractual "offer" to carry out the work specified therein and subject to the terms and conditions stated at the price quoted. As with any contractual offer, if the tender is not made irrevocable, it may be withdrawn at any time before acceptance.

3. The Award of Contract
   The owner will review bids after receipt and then award the contract. This constitutes contractual "acceptance" at which point the construction contract is created.

As a part of the process the contractor will be required to enter into a written agreement following the award of the contract. The preparation and execution of this written agreement is in reality evidence of the contract already created upon the acceptance of the tender.

An owner is not obliged to accept the lowest, or any, tender, in the absence of an undertaking or condition in the instructions to bidders to that effect.

10.2 WHEN TO TENDER

Use of the formal tendering process to award contracts will of course be inappropriate and uneconomical in some circumstances, i.e., small, uncomplicated repair projects or work for which there are only one or two qualified experts available. The question accordingly becomes when ought a condominium corporation employ the process, as opposed to say, negotiating a contract with one or two contractors? The answer to that question will depend on the particular circumstances of each case. You should however keep the following in mind:

1. Your purpose in tendering is to obtain the best work at the proper price. What does the tendering process cost? Does its cost outweigh the benefit to be gained from the competition it will create?
2. The process is time consuming and hence inappropriate for work requiring immediate attention.
3. Do not exchange your director's or property manager's hat for that of your architect or engineer; you expose yourself to liability if you do. If you have any doubt as to whether it is more advisable to go to the expense of tendering, consult you engineer or architect for his or her opinion. You, as directors or managers are not obliged to bring personal engineering or construction

expertise to your position. You are obliged to see that the corporation carries out its repair and maintenance duties (see sections 42, 15(1) and 24(1) of the Condominium Act R.S.O. 1980, c.84 as amended, and the analogous legislation of the other provinces) and that you accordingly make reasoned decisions based upon all necessary expert opinion.

4. The Canadian Construction Documents Committee, a committee composed of various construction and engineering associations throughout Canada, has published a booklet entitled, "A Guide to Calling Bids and Awarding Contracts" (CCDC No.23). This is the "bible" in terms of setting out the procedure of the tendering process. Your consultant should have a copy of this in his office. It is a short, quick read and most helpful in explaining the procedure.

10.2.1 Preparing To Call For Bids

Once the decision has been make to put work out to tender, your consultant will prepare "bid documents". It will be up to your consultant to determine the detail that will be required in these documents, keeping in mind their purpose being to provide potential bidders with enough information to decide whether they are interested in the work, to allow such bidders to make an informed bid if indeed interested, and to avoid disputes once construction has begun.

Generally speaking a complete set of bid documents consists of the following:

(a) instructions to bidders
(b) bid form
(c) the construction contract and general conditions
(d) supplementary conditions
(e) specifications
(f) drawings, design details and schedules

(g) construction scheduling requirements
(h) addenda (issued prior to bid closing)

In the condominium context, you and your consultant should consider whether the following should be made available for inspection to bidders as part of the bid documents:

(a) the "as built" architectural, structural, engineering, mechanical, electrical and plumbing plans of the building;
(b) the original specifications indicating thereon all material changes
(c) the plans for underground site service, site grading, etc.
(d) the existing warranties and guarantees for equipment, fixtures or chattels to be repaired or replaced.

While it is not in law strictly necessary, you may wish to advise potential bidders in your instructions that the condominium corporation reserves the right to choose amongst the tenders, and not necessarily accept the lowest, or any, bid. You should however be aware that contractors bear considerable cost in preparing bids. If your corporation is considering rejecting all bids on the basis that all are above its targeted budget, keep in mind that the construction industry prefers negotiation rather than a bid recall. If a recall is necessary, the practice is to ask only the three lowest acceptable bidders to re-bid.

You should discuss with your consultant whether potential bidders will be first required to visit the site to acquaint themselves with existing conditions. This could be done by way of a condition set out in the instructions to bidders requiring attendance at a pre-scheduled site meeting.

10.3 THE CONSTRUCTION CONTRACT

It is imperative that potential bidders be provided with a copy of the proposed written agreement. It is upon the terms and conditions as evidenced by that written agreement that the bidders make their "offer". There are three different types of construction contracts:

1. Stipulated Price ("Lump Sum") - This type of contract provides for the work to be performed for a fixed total amount. The total cost usually includes a contingency allowance, i.e. a sum added by the contractor to the actual estimated cost of the work to cover unforeseen occurrences. This type of contract is favored by owners, as it allows them to determine their maximum liability at the outset.

2. Unit Price - A unit price contract can be used when the total amount of work to be performed is not precisely fixed. Rather than an agreement to perform for a total amount, the contractor agrees to a stipulated price for each unit of work performed.

3. Cost Plus a Fee ("Cost Plus") - Pursuant to this type of agreement, the owner agrees to pay the contractor his actual direct costs of doing the work plus a stipulated percentage for overhead and profit. This type of contract is often used on renovation or "refitting" projects. It can also be used on small projects where it is difficult to accurately specify or show the work on drawings or specifications.

10.3.1 The Terms of the Contract

1. Clarify the extent to which the condominium provides water, power and washroom facilities to the construction project.
2. Clarify the availability of the condominium property for lunch or work breaks.
3. In addition to an indication of the completion date, consider whether "milestone dates" should be specified (i.e. deadlines for the completion of certain phases of the work).
4. Consider whether a "bonus" provision is desirable to reward the contractor for early completion of work.

10.4 THE CALL FOR BIDS

A decision should be made at the beginning of the tendering process to either tender at large or directly invite selected contractors to bid. In the case of the former, there can be advertisement in the local newspaper or in a trade newspaper such as the "Daily Commercial News and Construction Record". On the other hand your consultant may decide that an invitation to selected bidders is more desirable, perhaps because of the complexity of the work involved or because of the number of qualified or available contractors. In the case of an invitation to selected bidders, the industry practice is to accept the lowest bid. The advertisement for bids should include your condominium corporation number, location, a general description of the work, the requirements for bid security and performance security, if any, the time and place for receipt of bids and the location and conditions of availability of bid documents. The key to the advertisement is to give enough information to allow the potential bidders to decide if the work interests them, and if it is within their capabilities.

For small projects, a bid deadline of two weeks from the date of advertisement is normally acceptable, while larger projects may require four or more weeks.

Extreme care should be taken during the bidding period to ensure that all bidders are basing their bids on identical information, drawings and specifications. To this end, your consultant must be extremely careful not to issue new information when questioned about the documents or the project, except by written addenda to all bidders. This ensures that your condominium corporation can accurately compare the final bids against each other on an equal basis.

10.4.1 Receipt of Bids

In most cases, your consultant will instruct bidders to return completed bid forms to his or her office. It is customary for contractors to provide their bid forms in a sealed opaque envelope which is stamped with the date and time upon receipt. Your consultant will only accept amendments to these bids, if such amendments are made in accordance with the original instructions to bidders. Bids are normally opened for review immediately after bid closing. It is sometimes the practice to open bids in the presence of the contractors or their representatives.

10.4.2 Award of Contract

As was earlier indicated, a contract to do the work will be created upon the condominium corporation, in consultation with its architect or engineer, accepting one of the bids and communicating this acceptance to the successful contractor. The award of contract is usually done within ten days of the opening of bids, subject of course to the complexity of the bid review.

10.5 A WORD ABOUT BONDING

Depending upon the size of the work to be undertaken, your condominium corporation may wish to consider the use of bonding to guarantee performance of various components of the construction project, from the tendering process through until the completion of the work.

In the construction context, the bond document provides that the "Obligor" or "Surety" (usually an insurance company) will pay a fixed sum of money to another party (i.e. the condominium corporation, or in the case of certain payment bonds, to the contractor or subcontractors), provided that if specified conditions are fulfilled, the obligation to pay is null and void. There are three types of bonds employed in construction practice:

1. Bid Bond - This is a bond put up by the contractor in favor of the condominium corporation as a guarantee of good faith in tendering and to dissuade contractors from submitting frivolous bids which they have neither the intention nor the ability to adhere to if they are accepted. This bond is forfeited (i.e. the insurance company indemnifies the condominium corporation) if the tender is accepted and the contractor thereafter fails to execute a formal written contract. Bid bonds are normally required in amount equal to 10% of the bid amount.
2. Performance Bond - A performance bond is placed by the contractor as a guarantee of performance of the terms of the construction contract. A breach of contract entitles the condominium corporation to call on the bonding company to pay for any losses suffered by the

corporation to the limit of the face amount of the bond. Performance bonds are normally required in an amount equal to 50% of the bid amount.

3. Payment Bond - This type of bond is put up to guarantee the payment of monies due or to become due to the person or persons in whose favor the bond is given. For example, a contract may require the owner to obtain a payment bond to ensure that it will pay what is due by it under contract. Payments bonds are normally required in an amount equal to 50% of the bid amount.

GOOD LUCK!

APPENDIX A

COMMONLY USED FORMS

MINUTES OF A MEETING OF THE BOARD OF MANAGERS
OF THE OWNERS: CONDOMINIUM PLAN NO.
HELD AT EDMONTON, ALBERTA, AT

ON THE ___ DAY OF _____, A.D. 19 .

PRESENT:

being all the Members of the Board of Managers.

CHAIRMAN AND SECRETARY:

_____ was Chairman and _____ was Secretary.

CONSTITUTION OF MEETING:

All of the Members of the Board of Managers of the Corporation being present in person and having waived notice of the calling of the Meeting and having agreed that their signatures at the end of these Minutes would constitute the waiver of notice and consent to the transaction of all business coming before the Meeting, the Chairman declared the Meeting to be duly constituted.

CHANGE OF ADDRESS FOR SERVICE:

The Chairman then advised the Meeting that it was desirable to change the address for service of the Condominium Corporation and UPON MOTION DULY MADE, SECONDED, AND UNANIMOUSLY CARRIED, it was resolved that the address for service of the Condominium Corporation as previously registered, be hereby repealed and that the new address for service be:

from and after the date of the said resolution.

The Secretary was instructed to notify the Land Titles Office of the Northern Alberta Land Registration District of the change of adress for service by registering at the Land Titles Office of the Northern Alberta Land Registration District a Notice of Change of Address for Service (Form 8).

ADJOURNMENT:

There being no further business coming before the Meeting, the Meeting adjourned.

_____
CHAIRMAN

_____
SECRETARY

A 2

ESTOPPEL CERTIFICATE

CONDOMINIUM CORPORATION

CONDOMINIUM PLAN NO.

TO: _____ DATE: _____

_____

_____

RE: UNIT _____ CONDOMINIUM PLAN NO. _____

PURSUANT TO SECTION 31 (3) OF THE CONDOMINIUM PROPERTY ACT, R.S.A. 1980 CHAPTER C-22 AS AMENDED, THE OWNERS: CONDOMINIUM PLAN NO. HEREBY CERTIFIES THAT AS OF THE DATE HEREOF:

1. The current common expense levy (condominium fee) for the unit is $_____ per year payable in 12 monthly installments of $_____ on or before the 1st of each month.

2. The unit is subject to outstanding common expenses levies in the sum of $_____ plus interest of $_____ for a total sum of $_____.

3. The next payment due for the unit's common expense levy is $_____ on _____, 198 .

4. The payment for the common expense levy are to be made to:

THE TREASURER
THE OWNERS: CONDOMINIUM PLAN NO.

(insert address here)

THE OWNERS: CONDOMINIUM PLAN NO.

PER: _____ (seal)

PER: _____

3/3K2

FORM 3

NOTICE OF CHANGE OF BY-LAWS
(The Condominium Property Act, S. 26)

CONDOMINIUM CORPORATION

The Owners: Condominium Plan No. (the Corporation) hereby certifies that by a special resolution passed on the day of , A.D. 198 , the by-laws of the Corporation were added to, amended or repealed as follows:

"Be it resolved as a special resolution of The Owners: Condominium Plan No. (the Corporation) that the Bylaws of the Corporation as previously registered either Statutory or otherwise, be and they are hereby repealed and the Bylaws hereto annexed are hereby adopted as and made the Bylaws of and applicable to the Corporation and the parcel referred to in Condominium Plan No. from and after the date of this resolution."

IN WITNESS WHEREOF the seal of The Owners: Condominium Plan No. was affixed on the day of A.D. 198 , in the presence of

THE OWNERS: CONDOMINIUM PLAN NO.

per: _____

c/s

_____
Witness

per: _____

A 4

STATEMENT

CONDOMINIUM CORPORATION

THE OWNERS: CONDOMINIUM PLAN NO.

TO: _____ DATE: _____

_____

_____

RE: UNIT_____ CONDOMINIUM PLAN NO. _____

PURSUANT TO SECTION 36 OF THE CONDOMINIUM PROPERTY ACT, R.S.A. 1980 CHAPTER C-22 AS AMENDED, BE ADVISED AS FOLLOWS:

1. Unit _____ Condominium Plan No. _____ is subject to outstanding common expenses levies (condominium fees) or assessments of the Condominium Corporation together with interest and other costs in the amount of $_____.

2. The Corporation has not been served with any action commenced against the Corporation.

3. There is no unsatisfied Judgement or Order for which the Corporation is liable.

4. There is no written demand made upon the Corporation for any amounts in excess of $5,000.00 that, if not met, may result in an action being brought against the Corporation.

5. There is no subsisting management agreement. - OR -
Attached is the subsisting management agreement. (delete one)

6. There is no subsisting recreational agreement. - OR -
Attached is the subsisting recreational agreement. (delete one)

IF CHECKED OFF THE FOLLOWING INFORMATION HAS BEEN PROVIDED:

7. _____ Attached is a copy of the current budget of the Corporation.

8. _____ Attached is a copy of the most current financial statement of the Corporation.

9. _____ Attached is a copy of the by-laws of the Corporation.

10. _____ Attached is a copy of the most current minutes of the proceedings of the general meeting of the Corporation.

11. _____ Attached is a copy of the most current minutes of the Board of the Corporation.

"UPON MOTION DULY MADE BY _____ AND SECONDED BY _____ IT WAS UNANIMOUSLY RESOLVED THAT the Budget appended to these Minutes as Appendix 1 be hereby adopted as the Corporation's fund for administration expenses for the fiscal year commencing _____ to and including _____, and each Unit Owner is hereby levied a contribution for such administrative expenses in an amount proportionate to the Unit Factor for his respective Unit, payable in monthly instalments due on or before the first day of each month, as more particularly set forth in Appendix 2 to these Minutes, such payments to be made to The Owners: Condominium Plan No. _____, (address), Edmonton, Alberta, (postal code).

CARRIED.

NOTE:

1. Appendix 1 is the usual form of Budget ie. Projected Expenses and Costs for the fiscal or calendar year which would be comprised of a summary of the data on which the Budget is based.

2. Appendix 2 is the unit by unit fee allocation. The total of all individual unit fees must be equal to the Budget set out in Appendix 1. All allocations must be based on exactly the unit factor for each unit. We recommend that a format along this line be used when calculating the condominium fee for each unit (assuming the fee is to be paid monthly):

Budget divided by 10,000 Unit Factors = $ per unit factor x unit factor for each unit = total assessment for the year for the unit divided by 12 = monthly assessment.

This should be done for every unit and you may want to use the legend as found on the Condominium Plan to facilitate the reproduction of this material.

ie. Budget of $70,000.00 and each odd numbered unit has 200 unit factors and the even numbered units have 100 unit factors.
Therefore $70,000.00 divided 10,000 = $7.00 per unit factor

Unit 1 = 200 x $7.00 =$1,400.00 per year divided by 12 = $116.66 per month
Unit 2 = 100 x $7.00 =$ 700.00 per year divided by 12 = $ 58.33 per month
Unit 3 = 200 x $7.00 =$1,400.00 per year divided by 12 = $116.33 per month
Unit 4 = 100 x $7.00 =$ 700.00 per year divided by 12 = $ 58.33 per month

Repeat for the rest of odd and even numbered units.
(Resolution)
D15

Precedent
Re: Acceleration
Condo fee arrears

UPON MOTION DULY MADE by _____ seconded by _____ and unanimously carried, it was resolved that pursuant to By-law 86 the payments due from _____ and _____ (hereinafter referred to as the owners), the owners of Unit _____ Plan No. in the sum of _____ ($_____) Dollars per month and which are currently in arrears for the past _____ ( ) months in the sum of _____ _____ ($_____) Dollars plus interest in the sum of _____ ($_____) Dollars be and are hereby accelerated as provided in By-law 86(d) and that the sum of _____ ($_____) Dollars being the accelerated payments due plus interest at ( ) percent per annum be recovered from the owners, with the authority of the treasurer, on the advice of the Corporation's legal counsel to commence and prosecute such actions, file such documents and take such steps as are necessary or desirable to recover the accelerated payments, interest at ( ) percent per annum, expenses and costs owing to the Corporation by the owners and that this shall include, without limiting the generality of the foregoing the right to file a Caveat against the title to the owners' units and to take advantage of such procedures as are available pursuant to the Corporation By-laws and the Condominium Property Act.

BALLOT

MOTION #1

____ Yes

____ No

or my choices for the Board are as follows:

_____ _____

_____ _____

_____ _____

_____ _____

_____

_____
AUTHORIZED SIGNATURE

_____
NUMBER OF UNIT FACTORS

MOTION #2

____ Yes

____ No

_____
AUTHORIZED SIGNATURE

_____
NUMBER OF UNIT FACTORS

MOTION #3

____ Yes

____ No

_____
AUTHORIZED SIGNATURE

_____
NUMBER OF UNIT FACTORS

7/3K2

Condominium Corporation - The Owners: Condominium Plan No.

B A L L O T P A P E R For use at the Meeting, , 19

An Explanation of Voting Procedures

(1) Voting at the meeting will be regulated by the Chairman, subject to the ordinary rules of parliamentary procedure, and the overall control of those present and entitled to vote.

(2) Any matter may be decided by a show of hands or poll vote. However, if a vote by a show of hands appears inconclusive, any person entitled to vote or the Chairman may ask that the vote be determined by a formal poll, using ballot papers.

(3) If ballot papers are used, the voting rights of an Owner will be determined by the "unit factor" of his/her unit (as recorded in the Land Titles Office). Unit factors represent the Owner's fractional share in the Condominium Corporation -- they are also used to determine the monthly condominium maintenance fees paid by Owners.

(4) The unit factor represented by this Ballot is shown at the foot of the Ballot. The smallest unit in this property has a unit factor of , and the largest a factor of . The total of all unit factors is 10,000.

Ballots for questions that may be raised from the floor. If these ballots are to be used, please enter the questions to be voted upon below, according to the directions given by the Chairman. The unit factor is indicated. An alteration to the unit factor written in will spoil the ballot paper and it will not be counted. Please mark your ballot with an "X".

ITEM		YES	NO
6	UNIT FACTOR _____		
ITEM		YES	NO
5	UNIT FACTOR _____		
ITEM		YES	NO
4	UNIT FACTOR _____		
ITEM		YES	NO
3	UNIT FACTOR _____		
ITEM		YES	NO
2	UNIT FACTOR _____		
ITEM		YES	NO
1	UNIT FACTOR _____		

AMENDING CONDOMINIUM BY-LAWS

Condominium Property Act C-22 RSA 1980

1. Condominium Corporation establishes a Committee to review By-laws

2. Obtain Copy Of
   - Condominium Plan)
   - Master File) all of these documents
   - current By-laws) are found at the
   - title to all units) Land Titles Office

3. Draft By-Laws

4. Meet with Committee/Board of Managers to review By-laws (if necessary)

5. Information Night - consider the following:
   - meet with owners to discuss draft of By-laws
   - send out questionnaires (example attached)
   - highlight changes of By-laws (comparison of draft/current By-laws)
   - send covering letter explaining reason for changes to By-laws

6. Final Draft Form of By-laws

7. Contact Mortgage Lender
   - for assistance (if necessary)
   - (Section 21) - notice and proxy

8. Search Title to All Units on Eve of Passing By-laws

   - ensure all who vote or sign Resolution are owners and are able to vote (ie. condominium fee arrears may disentitle right to vote)

9. Pass By-Laws
   Special Resolution required [Section 26(2)]
   - Special resolution definition [Section 1(1)(s)]
     2 Methods
     (a) by signed Resolution or
     (b) at property convened meeting

10. File Resolution With New By-laws at Land Titles Office
    - obtain certified copy of new By-laws
    - obtain certified copy of Master File [Section 26(3)]

11. Distribute New By-laws to Owners (and tenants)
    - consider having Bylaws property bound
    - consider covering letter when By-laws are distributed

12. PAY YOUR LEGAL BILL !!!!

(D13-11)

FORM 8

NOTICE OF CHANGE OF ADDRESS FOR SERVICE

(THE CONDOMINIUM PROPERTY ACT S.62 (2))

THE OWNERS: CONDOMINIUM PLAN NO. hereby give notice that by a resolution of the Board dated the day of A.D. 19 , it has designated

as the address at which documents may be served on the Corporation.

DATED this day of , A.D. 19

The seal of The Owners: Condominium Plan No. was hereunto affixed in the presence of:

THE OWNERS: CONDOMINIUM PLAN NO.

per: _____
President
(seal)

per: _____
Secretary

_____
Witness

FORM 9

NOTICE OF CHANGE OF MEMBERS OF THE BOARD
(THE CONDOMINIUM PROPERTY ACT S.23(2))

The Owners: Condominium Plan No. hereby give notice that on the day of , A.D. 198 , the following persons were appointed members of the Board of The Owners: Condominium Plan No.

NAME	ADDRESS

Notice is also given that on the day of , A.D. 198 , the following persons ceased to hold office as members of the Board:

NAME	ADDRESS

The members of the Board are as of this date:

NAME	ADDRESS

DATED this day of , A.D. 198 .

The Seal of the Owners: Condominium Plan No. was hereto affixed on the day of , A.D. 198 in the presence of:

The Owners: Condominium
Plan No.

WITNESS

Per: _____
(President)

(seal)

Per: _____
(Secretary)

RESOLUTION AND PROXY

THE OWNERS: CONDOMINIUM PLAN NO.
CONDOMINIUM CORPORATION

Resolution and Proxy authorizing amending of Condominium Bylaws.

WE, _____,

owners of Unit _____ Condominium Plan No. hereby consent to the following resolution being passed namely:

> "Be it resolved as a special resolution of The Owners: Condominium Plan No. (the Corporation) that the Bylaws of the Corporation as previously registered either Statutory or otherwise, be and they are hereby repealed and the Bylaws hereto annexed are hereby adopted as and made the Bylaws of and applicable to the Corporation and the parcel referred to in Condominium Plan No. from and after the date of this resolution."

WE, _____,

also hereby authorize the holder of this Resolution to be our proxy for all purposes associated with the passing of the Condominium Bylaws as aforesaid should a meeting be called for that purpose whether it be a general meeting or an extraordinary general meeting and that this document be our proxy for the same.

DATED this day of , A.D. 198 at the City of Edmonton, in the Province of Alberta.

_____ _____
WITNESS OWNER

_____ _____
WITNESS OWNER

RESOLUTION

THE OWNERS: CONDOMINIUM PLAN NO.
CONDOMINIUM CORPORATION

RESOLUTION AUTHORIZING AMENDING OF CONDOMINIUM BYLAWS.

WE, the owners of Units in Condominium Plan No. hereby consent to the following resolution being passed, namely:

"Be it resolved as a special resolution of The Owners: Condominium Plan No. (the Corporation) that the Bylaws of the Corporation as previously registered either Statutory or otherwise, be and they are hereby repealed and the Bylaws hereto annexed are hereby adopted as and made the Bylaws of and applicable to the Corporation and the parcel referred to in Condominium Plan No. from and after the date of this resolution."

DATED this day of , A.D. 198 at the City of Edmonton, in the Province of Alberta.

Witness	Owner	Unit#	Unit Factor

APPENDIX B

SPECIAL PURPOSE BYLAWS

B.1 DEDUCTIBLE

In the event that a claim is made under any policy of insurance maintained by the corporation and the cause of the loss for which the claim is made is due to any act or omission of an owner, occupier or tenant of an owner or member of their families or guest, invitees or licensees of such owner, then the owner shall immediately reimburse the corporation for any insurance deductible paid by the corporation with respect to the loss for which the claim is made, the amount of same, to be recoverable by the corporation as a contribution against all other costs, charges and liabilities arising out of any loss that may be sustained or incurred by the corporation.

B.2 TENANTS AND OCCUPIERS

An owner shall not lease or grant possession of his unit to any tenant or occupier:

(a) until the owner complies with the deposit requirements (if any) of the corporation and provides the corporation with an address for service of any notice that may be served pursuant to the Act or the By-Laws as well as the name of the tenant or occupier;

(b) unless the tenant, or occupier undertakes in writing to be bound by and comply with the By-Laws of the corporation;

(c) until the owner gives notice in writing to the corporation of the tenancy or other occupancy accompanied by the written undertaking of the tenant, or occupier to be bound by the By-Laws of the corporation;

No tenant or occupier shall move into or occupy a unit unless By-Law 58(a) and 58(c) have been complied with. Nothing in these By-Laws shall in any way remove, waive or alter the responsibility of each owner for the performance of all By-Laws by all persons using or occupying his unit.

Any tenant or occupier of a unit on receiving notice from the corporation that the owner of the unit is in default of a payment or contribution or assessment levied by the corporation or an installment or installments thereof, shall deduct from the rent payable to the owner the contribution or assessment levied or the installment or installments in arrears (condominium fees and arrears) and any interest owing thereon and the tenant or occupier shall pay the same to the corporation and the amount so paid shall be deemed to constitute rent paid to the owner by the tenant or occupier.

B.3 PERSONAL PROPERTY & INJURY

The corporation will not be responsible to any owner or occupier of a unit, for any damage or loss whatsoever caused by or to the person or property of any owner or occupier of a unit including but not limited to:

(a) the parking areas provided on the common property;
(b) any part of the common property designated for the exclusive use and enjoyment of any owner or occupier; or
(c) any contents or improvements in or to any units.

Subject to the Act and the By-Laws, the insuring of any contents or improvements within or to a unit, is the sole responsibility of the owner or occupier of the unit, and an owner or occupier of a unit shall not require the corporation to repair any damage to any contents or improvements within or to the unit, however caused.

B.4 RECOVERY OF COSTS

The corporation may recover from an owner by an action for debt in any court of competent jurisdiction any sum of money, including its costs on a solicitor and his own client indemnity basis, which the corporation is required to expend as a result of any act or omission by an owner, his servants, agents, licenses, invitees or tenants which violates these By-Laws and there shall be added to any judgment all costs of such action including indemnification of the corporation's legal costs as between solicitor and his own client. Nothing herein shall be deemed to limit any right of an owner to bring an action or proceeding for the enforcement and protection of his rights and the exercise of his remedies.